

District of Columbia Code

1981 Edition



Property of the District of Columbia Government

DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF
COLUMBIA BY REASON OF BEING GENERAL AND
PERMANENT LAWS OF THE UNITED STATES), AS OF
APRIL 12, 1997, AND NOTES
TO DECISIONS THROUGH
MARCH 1, 1997

VOLUME 5

1997 REPLACEMENT

TITLE 16—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

TITLE 17—REVIEW

TITLE 18—WILLS

TITLE 19—DESCENT AND DISTRIBUTION

TITLE 20—PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES

TITLE 21—FIDUCIARY RELATIONS AND THE MENTALLY ILL

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1997

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IN MEMORY OF
DAVID ALLEN CLARKE

1943 - 1997

Whose lifetime of service to District residents and employees of the District government exemplified all that is honorable in a lawyer and public servant. David Clarke was the Chairman of the Council of the District of Columbia from January 2, 1983, to January 2, 1991, and from September 1993 until his death on March 27, 1997. Under his leadership the Council adopted the first enacted title to the D.C. Code since the 1974 enactment of Home Rule in the District—the enactment of Title 47 of the D.C. Code. Through his legislative initiatives, the Council of the District of Columbia passed a wealth of legislation beneficial to the citizens of the District. His court challenges helped to further develop the body of law in the District as it pertains to initiatives, First Amendment rights of Council members, and the controls on firearms. Because of the determination of David A. Clarke, the people of the District of Columbia now have better access to and confidence in their laws and will enter the next century better prepared to face the challenges that lie ahead.

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.

TITLES OF DISTRICT OF COLUMBIA CODE

PART I.—GOVERNMENT OF DISTRICT

Title

1. Administration.
2. District Boards and Commissions.
3. Public Care Systems.
4. Police and Fire Departments.
5. Building Restrictions and Regulations.
6. Health and Safety.
7. Highways, Streets, Bridges.
8. Parks and Playgrounds.
9. Public Buildings and Grounds.
10. Weights, Measures, and Markets.

PART II.—JUDICIARY AND JUDICIAL PROCEDURE

- *11. Organization and Jurisdiction of the Courts.
- *12. Right to Remedy.
- *13. Procedure Generally.
- *14. Proof.
- *15. Judgments and Executions; Fees and Costs.
- *16. Particular Actions, Proceedings and Matters.
- *17. Review.

PART III.—DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

- *18. Wills.
- *19. Descent and Distribution.
- *20. Probate and Administration of Decedents' Estates.
- *21. Fiduciary Relations and the Mentally Ill.

PART IV.—CRIMINAL LAW AND PROCEDURE

22. Criminal Offenses.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

PART V.—GENERAL STATUTES

25. Alcoholic Beverages.

*Title has been enacted as law.

Title

- 26. Banks and Other Financial Institutions.
- 27. Cemeteries and Crematories.
- *28. Commercial Instruments and Transactions.
- 29. Corporations.
- 30. Domestic Relations.
- 31. Education and Cultural Institutions.
- 32. Eleemosynary, Curative, Correctional, and Penal Institutions.
- 33. Food and Drugs.
- 34. Hotels and Lodging Houses.
- 35. Insurance.
- 36. Labor.
- 37. Libraries.
- 38. Liens.
- 39. Military.
- 40. Motor Vehicles and Traffic.
- 41. Partnerships.
- 42. Personal Property.
- 43. Public Utilities.
- 44. Railroads and Other Carriers.
- 45. Real Property.
- 46. Social Security.
- †47. Taxation and Fiscal Affairs.
- 48. Trademarks and Trade Names.
- 49. Compilation and Construction of Code.

*Title has been enacted as law.

†Title has been enacted as law, except Charter Provisions.

Table of Contents

Title 16

Particular Actions, Proceedings and Matters

CHAPTER	PAGE
1. Account	1
3. Adoption	3
4. Surrogate Parenting Contracts	19
5. Attachment and Garnishment	21
6. Bonds and Undertakings	51
7. Criminal Proceedings in the Superior Court	52
9. Divorce, Annulment, Separation, Support, Etc.	65
10. Proceedings Regarding Intrafamily Offenses	125
11. Ejectment and Other Real Property Actions	137
13. Eminent Domain	149
15. Forcible Entry and Detainer	167
17. Gaming Transactions	173
19. Habeas Corpus	175
21. Joint Contracts	180
23. Family Division Proceedings	182
25. Change of Name	276
27. Negligence Causing Death	277
29. Partition and Assignment of Dower	284
31. Probate Court Proceedings	288
33. Quieting Title Obtained by Adverse Possession	293
35. Quo Warranto	295
37. Replevin	299
39. Small Claims and Conciliation Procedure in Superior Court	304
41. Sureties	310
43. Arbitration	311
45. Uniform Child Custody Proceedings	324
47. Free Flow of Information	337
49. Authorization for Medical Consent for a Minor by an Adult Caregiver	339

Title 17

Review

1. United States Court of Appeals for the District of Columbia Circuit	343
3. District of Columbia Court of Appeals	344

Title 18

Wills

1. General Provisions	353
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CHAPTER	PAGE
3. Devises and Bequests	360
5. Probate of Wills	364

Title 19

Descent and Distribution

1. Rights of Surviving Spouse and Children	365
3. Intestates' Estates	374
5. Simultaneous Deaths; Uniform Law	381
7. Escheat	383

Title 20

Probate and Administration of Decedents' Estates

1. General Provisions	385
3. Opening the Estate	393
4. Supervised and Unsupervised Administration	407
5. The Personal Representative and Special Administrator; Appointment, Control and Termination of Authority	410
7. Administration of the Estate	420
9. Claims	444
11. Special Provisions Relating to Distribution	452
13. Closing the Estate	457

Title 21

Fiduciary Relations and the Mentally Ill

1. Guardianship of Infants	461
3. Transfers to Minors; Uniform Law	476
5. Hospitalization of the Mentally Ill	490
7. Property of Mentally Ill Persons	526
9. Mentally Ill Persons Found in Certain Federal Reservations	527
11. Commitment and Maintenance of Substantially Retarded Persons	532
12. Use of Trained Employees to Administer Medication to Persons with Mental Retardation or other Disabilities	539
13. Alcoholics and Drug Addicts	544
15. Conservators	545
17. General Fiduciary Relations	546
18. Charitable and Split-Interest Trusts	552
19. Estates of Absentees and Absconders	554
20. Guardianship, Protective Proceedings, and Durable Power of Attorney	555
22. Health-Care Decisions	593

TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.

Chapter

1. Account.....	§ 16-101.
3. Adoption.....	§§ 16-301 to 16-315.
4. Surrogate Parenting Contracts.....	§§ 16-401 to 16-402.
5. Attachment and Garnishment.....	§§ 16-501 to 16-584.
6. Bonds and Undertakings.....	§ 16-601.
7. Criminal Proceedings in the Superior Court.....	§§ 16-701 to 16-713.
9. Divorce, Annulment, Separation, Support, Etc.....	§§ 16-901 to 16-924.
10. Proceedings Regarding Intrafamily Offenses.....	§§ 16-1001 to 16-1034.
11. Ejectment and Other Real Property Actions.....	§§ 16-1101 to 16-1158.
13. Eminent Domain.....	§§ 16-1301 to 16-1385.
15. Forcible Entry and Detainer.....	§§ 16-1501 to 16-1505.
17. Gaming Transactions.....	§§ 16-1701 to 16-1704.
19. Habeas Corpus.....	§§ 16-1901 to 16-1909.
21. Joint Contracts.....	§§ 16-2101 to 16-2106.
23. Family Division Proceedings.....	§§ 16-2301 to 16-2372.
25. Change of Name.....	§§ 16-2501 to 16-2503.
27. Negligence Causing Death.....	§§ 16-2701 to 16-2703.
29. Partition and Assignment of Dower.....	§§ 16-2901 to 16-2925.
31. Probate Court Proceedings.....	§§ 16-3101 to 16-3112.
33. Quieting Title Obtained by Adverse Possession.....	§ 16-3301.
35. Quo Warranto.....	§§ 16-3501 to 16-3548.
37. Replevin.....	§§ 16-3701 to 16-3740.
39. Small Claims and Conciliation Procedure in Superior Court.....	§§ 16-3901 to 16-3910.
41. Sureties.....	§§ 16-4101 to 16-4102.
43. Arbitration.....	§§ 16-4301 to 16-4319.
45. Uniform Child Custody Proceedings.....	§§ 16-4501 to 16-4524.
47. Free Flow of Information.....	§§ 16-4701 to 16-4704.
49. Authorization for Medical Consent for a Minor by an Adult Caregiver.....	§ 16-4901.

CHAPTER 1. ACCOUNT.

Sec.

16-101. Parties.

§ 16-101. Parties.

An action of account shall and may be brought against the executor and administrator of every guardian, bailiff and receiver; and by one joint-tenant and tenant in common, his executors and administrators, against the other, as bailiff for receiving more than comes to his just share or proportion, and

§ 16-101

PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

against the executor and administrator of such a joint-tenant or tenant in common. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1; 1973 Ed., § 16-101.)

Applicability. — This section and § 16-2701 et seq. are controlling as to the negligence law to be applied to an action brought in the District of Columbia under the Federal Tort

Claims Act. *Dutcher v. United States*, 736 F. Supp. 1142 (D.D.C.), aff'd, 923 F.2d 200 (D.C. Cir. 1990).

CHAPTER 3. ADOPTION.

Sec.

- 16-301. Jurisdiction; rules.
- 16-302. Persons who may adopt.
- 16-303. Persons adopted.
- 16-304. Consent.
- 16-305. Petition for adoption.
- 16-306. Notice of adoption proceedings.
- 16-307. Investigation, report, and recommendation.
- 16-308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent.

Sec.

- 16-309. Adoption proceedings.
- 16-310. Finality of decrees of adoption.
- 16-311. Sealing and inspection of records and papers.
- 16-312. Legal effects of adoption.
- 16-313. Child as including adopted person.
- 16-314. Birth certificates.
- 16-315. Prior proceedings.

§ 16-301. Jurisdiction; rules.

(a) Subject to subsection (b) of this section, the Superior Court of the District of Columbia has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any of the following circumstances exist:

- (1) petitioner is a legal resident of the District of Columbia;
- (2) petitioner has actually resided in the District for at least one year next preceding the filing of the petition; or
- (3) the child to be adopted is in the legal care, custody, or control of the Mayor or a child-placing agency licensed under the laws of the District. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(1); 1973 Ed., § 16-301; Apr. 30, 1988, D.C. Law 7-104, § 4(a), 35 DCR 147.)

Cross references. — As to exclusive jurisdiction of Family Division of Superior Court for adoption proceedings, see § 11-1101.

As to age of majority, see note following § 21-101.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Residency. — Since none of petitioners was a legal resident of the District of Columbia or had actually resided in the jurisdiction for at least a year preceding the filing of the petition, the only potential basis for the assertion of jurisdiction by the Superior Court was to be found in subsection (b)(3) of this section. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

Relinquishment to child-placing agency.

— A properly executed relinquishment to a child-placing agency may provide a jurisdictional underpinning to the filing of an eventual adoption petition pursuant to this section, because it severs the parental rights and responsibilities of the parent executing the relinquishment. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

Where non-resident petitioners sought to invoke jurisdiction by use of natural mother's relinquishment of her parental rights and responsibilities to a licensed District of Columbia child-placing agency, but natural father filed his consent to the adoption and joined his wife's petition and the identity of the adopter was known to the natural mother at the time she relinquished her parental rights, natural mother intended to consent to a specific identified adoption or a partial relinquishment that would operate in the same fashion as a standard consent; that being the case, legal care,

custody or control of the proposed adoptees was never intended to, and did not, pass to the child-placing agencies. In re S.G., App. D.C., 663 A.2d 1215 (1995).

Neither natural mothers, natural fathers nor fathers' wives intended that "permanent care and guardianship" of the child, as used in § 32-1007(a)(1), would be transferred to the agency, enabling the agency to consent to any adoption except the one which had been agreed upon; therefore, there was no basis for the assertion of jurisdiction by the Superior Court under § 16-301(b). In re S.G., App. D.C., 663 A.2d 1215 (1995).

Effect of adoption petition. — The jurisdictional prerequisite of subsection (b)(3) of this section is satisfied when an adoption petition is filed by petitioners who cannot meet the residency requirements of this section. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

§ 16-302. Persons who may adopt.

Any person may petition the court for a decree of adoption. A petition may not be considered by the court unless petitioner's spouse, if he has one, joins in the petition, except that if either the husband or wife is a natural parent of the prospective adoptee, the natural parent need not join in the petition with the adopting parent, but need only give his or her consent to the adoption. If the marital status of the petitioner changes after the time of filing the petition and before the time the decree of adoption is final, the petition must be amended accordingly. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1; 1973 Ed., § 16-302.)

Legislative intent. — The adoption statute is intended to provide a loving, nurturing home that pursues the best interests of the adopted child after (1) transferring to the adoptive parent all legal rights, duties, and consequences of the parental relationship, (2) severing the rights and obligations of any natural parent who no longer will have custody of the child, and (3) determining all other legal effects of the adoption upon the families of the natural parents and the adoptive parents. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Adoption by unmarried couples. — The paramount statutory purpose — the "best interests" of the adoptee — will be best served, and no other affected interests protected by the statute will be ill served, by a liberal, inclusive interpretation of this section that says: unmarried couples, whether same-sex or opposite-sex, who are living together in a committed personal relationship, are eligible to file petitions for adoption under § 16-305. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Two unmarried persons — in particular, a same-sex couple living together in a committed personal relationship — may adopt a child. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Removal of child from District during proceedings does not defeat jurisdiction.

— Where the petitioners are residents of the District, the child to be adopted is born and raised in the District and is present in the District when the petition is filed, and the natural mother enters an appearance and is represented by counsel, the fact that the child is removed from the District while the proceedings are pending does not operate to defeat jurisdiction. In re J.E.G., App. D.C., 357 A.2d 855 (1976).

Cited in In re Three Adoption Cases, 118 WLR 645 (Super. Ct. 1990); C.K.C. v. Children's Adoption Resource Exch., 118 WLR 1305 (Super. Ct. 1990); In re L.S., 119 WLR 2249 (Super. Ct. 1991); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Adoption petitions by unmarried couples shall be granted or rejected on a case-by-case basis in the best interests of the prospective adoptee (on the assumption that all other statutory requirements are met). In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Natural father may adopt illegitimate child. — There is no legal force and effect or logic in the notion that a natural father cannot adopt his illegitimate child. In re J.H., App. D.C., 313 A.2d 874 (1974).

Sexual orientation of petitioners to adoption, to the extent relevant, is to be considered under the factors of § 16-309, which address the fitness of those seeking to adopt and the best interests of the child. In re D.S., 123 WLR 1149 (Super. Ct. 1995).

Joint adoptions by unmarried persons. — A joint adoption by unmarried persons was held to be in the child's best interests. In re D.S., 123 WLR 1149 (Super. Ct. 1995).

The fact that one member of an unmarried same-sex couple already has adopted the child does not create any impediment to both members' joining in the adoption. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Adoption by stepparent or one in similar position. — When one of the natural parents (by birth or adoption) is living in a committed personal relationship with the prospective adoptive parent, then pursuant to § 16-312(a) “the rights and relation as between adoptee, that natural [including adoptive] parent, and his [or her] parents and collateral

relations, including natural rights of inheritance and succession, are in no wise altered. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Cited in In re C.E.H., App. D.C., 391 A.2d 1370 (1978); In re D.I.S., App. D.C., 494 A.2d 1316 (1985); In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

§ 16-303. Persons adopted.

A person, whether a minor or an adult, may be adopted. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1; 1973 Ed., § 16-303.)

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 16-304. Consent.

(a) A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent, as provided by this section, signed and acknowledged before an officer authorized by law to take acknowledgments, before a representative of a licensed child-placing agency, or before the Mayor of the District, or unless a relinquishment of parental rights with respect to the prospective adoptee has been recorded and filed as provided by section 32-786 [32-1007].

(b) Consent to a proposed adoption of a person under eighteen years of age is necessary:

(1) from the prospective adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are both alive; or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the court-appointed guardian of the prospective adoptee; or

(D) from a licensed child-placing agency or the Mayor in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Mayor or licensed child-placing agency, based upon consents obtained in accordance with subparagraphs (A) through (C) of this paragraph, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Mayor; or

(E) from the Mayor in any situation not otherwise provided for by this subsection.

(c) Minority of a natural parent is not a bar to that parent's consent to adoption.

(d) When a parent whose consent is hereinbefore required, after such notice as the court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at

least six months next preceding the date of the filing of the petition, the consent of that parent is not required.

(e) The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interest of the child.

(f) A person over eighteen years of age may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); Oct. 22, 1970, 84 Stat. 1086, Pub. L. 91-488; 1973 Ed., § 16-304; July 22, 1976, D.C. Law 1-75, § 5(e), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87, § 12, 23 DCR 2544; Apr. 30, 1988, D.C. Law 7-104, § 4(b), 35 DCR 147.)

Legislative history of Law 1-75. — Law 1-75, the “District of Columbia Age of Majority Act,” was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-87. — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — See note to § 16-301.

References in text. — At the end of subsection (a) of this section, “32-1007” was inserted, in brackets, to reflect the renumbering of section 32-786 in the 1981 Edition of the D.C. Code.

Constitutionality. — Subsection (e) of this section is not unconstitutional on the grounds that it denies a natural parent due process. In re J.S.R., App. D.C., 374 A.2d 860 (1977).

Subsection (e) of this section is not constitutionally vague. In re J.S.R., App. D.C., 374 A.2d 860 (1977).

Statutory procedure required. — Absent unusual circumstances allowing the exercise of the *parens patriae* power, the Superior Court does not have authority to terminate parental rights to a child other than through the statutory procedure established in adoption proceedings. White v. N.E.M., App. D.C., 358 A.2d 328 (1976).

Jurisdiction. — Where non-resident petitioners sought to invoke jurisdiction by use of

natural mother’s relinquishment of her parental rights and responsibilities to a licensed District of Columbia child-placing agency, but natural father filed his consent to the adoption and joined his wife’s petition and the identity of the adopter was known to the natural mother at the time she relinquished her parental rights, natural mother intended to consent to a specific identified adoption or a partial relinquishment that would operate in the same fashion as a standard consent; that being the case, legal care, custody or control of the proposed adoptees was never intended to, and did not, pass to the child-placing agencies. In re S.G., App. D.C., 663 A.2d 1215 (1995).

Basis of adoption. — The theory of adoption is based upon the proposition that the child is wanted for its own sake, and not upon the proposition that it is accepted incidentally as the result of marriage to the mother. Fuller v. Fuller, App. D.C., 247 A.2d 767 (1968), appeal denied, 418 F.2d 1189 (1969).

Natural father may adopt illegitimate child. — There is no legal force and effect or logic in the notion that a natural father cannot adopt his illegitimate child. In re J.H., App. D.C., 313 A.2d 874 (1974).

Appointment of guardian ad litem unnecessary. — Where competing parties in the proceeding are given opportunity for a thorough hearing, and the petition is vigorously advocated and contested, and witnesses are cross-examined, the interests of the adoptee can be fully presented without the appointment of a guardian ad litem. In re Female Infant, App. D.C., 237 A.2d 468 (1968).

“In loco parentis.” — “In loco parentis” differs from adoption in that it is strictly temporary in nature rather than permanent. Fuller v. Fuller, App. D.C., 247 A.2d 767 (1968), appeal denied, 418 F.2d 1189 (1969).

Offer to support not same as agreement to adopt. — An offer to support a spouse’s illegitimate child in the same household does not amount to either a promise or an agreement

to legally adopt the child. *Fuller v. Fuller*, App. D.C., 247 A.2d 767 (1968), appeal denied, 418 F.2d 1189 (1969).

Support and treatment do not constitute adoption. — Taking an unrelated child into the family circle does not effect an adoption of the child, thereby imposing an obligation of support. *Fuller v. Fuller*, App. D.C., 247 A.2d 767 (1968), appeal denied, 418 F.2d 1189 (1969).

Treatment of a child not one's own in all matters as though she is one's natural child is not tantamount to adoption. *Fuller v. Fuller*, App. D.C., 247 A.2d 767 (1968), appeal denied, 418 F.2d 1189 (1969).

Choice of how consent may be accomplished. — Natural parent(s) may execute a written statement of consent to the adoption of the child by another person under subsection (a) of this section or the natural parent(s) may execute, and have recorded and filed with the Family Division of the Superior Court, a relinquishment of parental rights under § 32-1007(a), in which case a licensed child-placing agency which has been given the permanent care and guardianship of the child is vested with parental rights and may consent to the adoption of the child. *J.M.A.L. v. Lutheran Social Servs. of Nat'l Capital Area, Inc.*, App. D.C., 418 A.2d 133 (1980).

Withdrawal of consent prohibited without cause. — Consent of a natural parent to adoption of his child by another once given and acted upon should not be withdrawn without cause. In *re S.E.D.*, App. D.C., 324 A.2d 200 (1974).

Standard of proof for wrongful withholding of parental consent. — The standard of proof for the wrongful withholding of parental consent to adoption, contrary to the child's best interests, is the "clear and convincing" test. In *re J.S.R.*, App. D.C., 374 A.2d 860 (1977).

Order of adoption over objection of parent. — It is constitutionally permissible to order adoption over the objection of a parent if that is the least detrimental available alternative, without necessarily finding that the losing party is unfit. *Fisher v. Barker Found.*, App. D.C., 452 A.2d 1183 (1982).

Identity of birth father withheld by birth mother. — Where birth mothers refused to divulge identity of respective birth fathers of their children, and offered some reason for refusal, court entered interlocutory decrees of adoption pursuant to § 16-309(d) as in the best interests of the adoptees, despite lack of notice to unnamed birth fathers. In *re Three Adoption Cases*, 118 WLR 645 (Super. Ct. 1990).

Father's consent not required. — The father's consent to the proposed adoption was not required where he abandoned the child within the meaning of subsection (d) of this

section, and where the father's consent to the proposed adoption was being withheld contrary to the best interest of the child under subsection (e) of this section. In *re T.L.M.*, 114 WLR 1553 (Super. Ct. 1986).

Evidence sufficient that withholding of consent contrary to best interests of child.

— See In *re Douglas*, App. D.C., 390 A.2d 1, cert. denied, 439 U.S. 1058, 99 S. Ct. 738, 58 L. Ed. 2d 716 (1978); In *re A.R.*, 110 WLR 1109 (Super. Ct. 1982).

Abandonment must be proved by clear and convincing evidence, and an adoption will be granted without parental consent on grounds of abandonment only when the parent's conduct manifests an intention to be rid of all parental obligations and to forego all parental rights, because adoption without parental consent results in a drastic and permanent severing of one of the strongest and most basic of human relationships. In *re C.E.H.*, App. D.C., 391 A.2d 1370 (1978).

"Abandonment" does not require leaving child on a doorstep nor ceasing to feel concern for the child. In *re C.E.H.*, App. D.C., 391 A.2d 1370 (1978).

Court must consider totality of circumstances in determining whether there has been an abandonment, including the degree of parental love, care and attention. In *re C.E.H.*, App. D.C., 391 A.2d 1370 (1978).

Mere failure to support not decisive. — Parental failure to support a child is a factor to be considered in deciding whether there has been an abandonment, but where the parent is financially unable to render support the failure to do so is not voluntary and cannot constitute abandonment. In *re C.E.H.*, App. D.C., 391 A.2d 1370 (1978).

Notice of adoption proceedings. — A child placement agency, upon notification of the mother's intent to relinquish her parental rights to the agency, should inform the putative father that: (1) the mother (named) of a child has stated her intent to relinquish her parental rights to her child to the agency; (2) as a child placement agency licensed by the District of Columbia, it seeks to place the child for adoption by new parents, but if the putative father acknowledges paternity he has a right to seek custody of the child; (3) if the putative father does want custody, he should inform the child placement agency immediately of his intentions and should retain an attorney; (4) assertion of the putative father's right to custody may involve a formal legal proceeding before the Family Division of the Superior Court (address provided), at which a judge will preside; (5) before the formal proceeding occurs, the putative father will receive notice of the hearing of the case and an order to appear; and (6) any information which the putative father provides the child placement agency shall be in-

cluded in a report to the Family Division on the placement agency's recommendation for the best placement of the child. In *re H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

Child placement agency's role as a state actor in the adoption process requires that it provide a natural father a minimum amount of information concerning his procedural rights in an adoption proceeding. In *re H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

"Best interest" of the child. — The Constitution requires the Court to construe the "best interests" language under the adoption statute, subsection (e) of this section and § 16-309(b)(3), to mean that, when a natural father who has not abandoned his "opportunity interest" seeks custody of an infant child whom the mother has surrendered for adoption at birth, he shall be entitled — as under the guardianship statute — to custody if he would be a "fit" parent; unless, the adoptive parents persuade the Court with clear and convincing evidence that failure to terminate the father's parental rights would be detrimental to the best interest of the child. In *re H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

The most obvious, and possibly the only basis for denying custody to a fit parent in the best interest of the child, would be a finding based on clear and convincing evidence that parental custody would actually harm the child. In *re H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

Presumptively, a natural parent has right to the companionship, care and custody of his or her children, and a child's best interests are presumptively served by being with a parent, providing that the parent is not unfit; therefore, a stranger is ordinarily precluded from adopting a child over the objection of a biological parent. In *re L.W.*, App. D.C., 613 A.2d 350 (1992).

This section incorporates into the best interest standard a preference for a fit unwed father who has grasped his constitutionally protected opportunity interest, but this preference may be overridden if it is shown by clear and convincing evidence that the proposed adoption is in the best interest of the child, for that interest is the paramount consideration. In *re L.W.*, App. D.C., 613 A.2d 350 (1992).

The proceedings to terminate parental rights statute, § 16-2353(b), sets out several factors relevant to the best interest of the child, and these standards apply to contested adoption proceedings. In *re L.W.*, App. D.C., 613 A.2d 350 (1992).

Due process rights of putative father. — Putative father's right to procedural due process

was violated where he did not receive pre-adoption notice of adoption proceedings, and only by requiring de novo consideration of the adoption petition could the father be restored to the position he would have occupied had due process of law been accorded to him in the first place. In *re M.N.M.*, App. D.C., 605 A.2d 921, cert. denied, 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567 (1992).

Waiver of natural father's consent. — It was proper to waive, or not to require, the parental consent of the natural father, whose identity was never established in over 7 years. In *re J.H.M.*, 119 WLR 1209 (Super. Ct. 1991).

Parental consent withheld contrary to best interest of child. — The court granted the adoption of a child to petitioners, contrary to the statutory preference to which the biological father was entitled, where the court concluded adoption was in the best interests of the child because: (1) denial of the petition to adopt would have subjected the child to psychological harm because the biological father intended to lead the child away from petitioners and encourage him to take on a different cultural identity, resulting in a painful dilemma for the child to choose between two culturally different families; (2) adoption was the only way to make secure the child's legal status in petitioners' family, the only family the child knew, and to remove the dilemma for the child of making the choice himself; and (3) the child resided with the petitioners for more than eight years, and a strongly formed emotional relationship existed between the child, petitioners and petitioners' other son. In *re Baby Boy C.*, 120 WLR 1309 (Super. Ct. 1992).

Effect of adoption. — An adoption over a biological parent's objection effectively terminates that parent's interest. In *re L.W.*, App. D.C., 613 A.2d 350 (1992).

In one-parent relinquishment cases, legal care, custody or control may properly be said to have transferred to the adoption agency, thus establishing the Superior Court's jurisdiction, where the other parent not only failed to retain parental rights, but is either unknown, unidentified, unlocatable, has consented to the adoption or the requirement that he or she consent has been waived. In *re J.W.C.*, 122 WLR 249 (Super. Ct. 1994).

Evidence sufficient to support finding of abandonment. — See In *re J.E.G.*, App. D.C., 357 A.2d 855 (1976); In *re C.E.H.*, App. D.C., 391 A.2d 1370 (1978).

Findings of fact and conclusions of law. — Findings of fact and conclusions of law are necessary in order to intelligently review decisions of the Superior Court in adoption proceedings. In *re G.F.C.*, App. D.C., 314 A.2d 486 (1974).

Cited in *Platt v. Rogers*, 114 WLR 801 (Super. Ct. 1986); In *re D.R.M.*, App. D.C., 570 A.2d

796 (1990); *S.S. v. D.M.*, App. D.C., 597 A.2d 870 (1991); *In re L.S.*, 119 WLR 2249 (Super. Ct. 1991); *In re Baby Boy C.*, App. D.C., 630 A.2d 670 (1993), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994); *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

§ 16-305. Petition for adoption.

A petition filed for the adoption of a person shall be under oath or affirmation of the petitioner and the titling thereof shall be substantially as follows: “Ex parte in the matter of the petition of for adoption.” The petition or the exhibits annexed thereto shall contain the following information:

(1) the name, sex, date, and place of birth of the prospective adoptee, and the names, addresses and residences of the natural parents, if known to the petitioner, except that in an adoption proceeding that is consented to by the Mayor or a licensed child-placing agency, the names, addresses and residences of the natural parents may not be set forth;

(2) the name, address, age, business or employment of the petitioner, and the name of the employer, if any, of the petitioner;

(3) the relationship, if any, of the prospective adoptee to the petitioner;

(4) the race and religion of the prospective adoptee, or his natural parent or parents;

(5) the race and religion of the petitioner;

(6) the date that the prospective adoptee commenced residing with petitioner; and

(7) any change of name which may be desired.

When any of the above facts is unknown to the petitioner, the petitioner shall state this fact. When any of the above facts is known to the Mayor, or a licensed child-placing agency that as a matter of social policy declines to disclose them to the petitioner, the facts may be disclosed to the court in an exhibit filed by the Mayor or the agency with the court. If more than one petitioner joins in a petition, the requirements of this section apply to each. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88-24, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); 1973 Ed., § 16-305; Apr. 30, 1988, D.C. Law 7-104, § 4(c), 35 DCR 147.)

Cross references. — As to exclusion of information concerning race and religion when petitioner is stepparent of prospective adoptee, see § 16-308.

Section references. — This section is referred to in § 16-308.

Legislative history of Law 7-104. — See note to § 16-301.

Section does not deny equal protection. — This section, with its explicit recognition of race among the factors relevant to adoption, does not deny equal protection of the laws. In *re R.M.G.*, App. D.C., 454 A.2d 776 (1982).

Formal procedures not to be circumvented or substituted. — Formal adoption procedures cannot be circumvented or substituted by other procedures, as they are for the benefit of the child. *Fuller v. Fuller*, App. D.C.,

247 A.2d 767 (1968), appeal denied, 418 F.2d 1189 (1969).

Unmarried couples. — Unmarried couples living together in a committed personal relationship, whether of the same sex or of opposite sexes, are eligible to “petition the court for a decree of adoption” under § 16-302. In *re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

Adoption petitions by unmarried couples shall be granted or rejected on a case-by-case basis in the best interests of the prospective adoptee (on the assumption that all other statutory requirements are met). In *re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

Adoption by partner of adoptive parent. — The fact that one member of an unmarried same-sex couple already has adopted the child does not create any impediment to both mem-

bers' joining in the adoption. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Petition considered amended. — Where petitioners refuse to include information regarding race and religion in their petition, but the court possesses such information and indicates its approval, the petition will be considered to be amended. In re V.M.DeF., App. D.C., 307 A.2d 737 (1973).

Racial classification deemed necessary to promote best interest of child. — An inherently suspect, indeed presumptively invalid, racial classification in the adoption statute is, in a constitutional sense, necessary to advance a compelling governmental interest: the best interest of the child. It thus survives strict scrutiny. In re R.M.G., App. D.C., 454 A.2d 776 (1982).

Factors evaluated when race relevant in adoption contest. — When race is relevant in an adoption contest, the court must make a

3-step evaluation: (1) How each family's race is likely to affect the child's development of a sense of identity, including racial identity; (2) how the families compare in this regard; and (3) how significant the racial differences between the families are when all the factors relevant to adoption are considered together. In re R.M.G., App. D.C., 454 A.2d 776 (1982).

Appellate court review of judicial discretion strict where race was factor in trial court. — Where race is a factor for the trial court to consider, appellate review of judicial discretion under the statute must be as exacting as scrutiny of the statute itself. In re R.M.G., App. D.C., 454 A.2d 776 (1982).

Joint adoption by unmarried persons was in the child's best interests. In re D.S., 123 WLR 1149 (Super. Ct. 1995).

Cited in In re L.S., 119 WLR 2249 (Super. Ct. 1991).

§ 16-306. Notice of adoption proceedings.

(a) Except as provided by subsection (b) of this section, due notice of pending adoption proceedings shall be given to each person whose consent is necessary thereto, immediately upon the filing of a petition. The notice shall be given by summons, by registered letter sent to the addressee only, or otherwise as ordered by the court.

(b) A party who formally gives his consent to the proposed adoption, as provided by this chapter, thereby waives the requirement of notice to him pursuant to this section. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1; 1973 Ed., § 16-306.)

Notice by publication insufficient. — Superior Court attached no legal significance to notice by publication, even as a last-ditch effort to reach an unnamed birth father. In re Three Adoption Cases, 118 WLR 645 (Super. Ct. 1990).

Timing of notice. — Family Division's practice of providing notice of pending adoption proceeding to interested parties only upon the issuance of the show cause order violates the notice requirements of this section. In re H.R., App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

Father's right to notice under this section was violated when the court failed to provide him with immediate notice of the filing of the O. family petition to adopt his son. In re H.R., App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

Due process rights of putative father. — Putative father's right to procedural due pro-

cess was violated where he did not receive pre-adoption notice of adoption proceedings, and only by requiring de novo consideration of the adoption petition could the father be restored to the position he would have occupied had due process of law been accorded to him in the first place. In re M.N.M., App. D.C., 605 A.2d 921, cert. denied, 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567 (1992).

Identity of birth father withheld by birth mother. — Where birth mothers refused to divulge identity of respective birth fathers of their children, and offered some reason for refusal, court entered interlocutory decrees of adoption pursuant to § 16-309(d) as in the best interests of the adoptees, despite lack of notice to unnamed birth fathers. In re Three Adoption Cases, 118 WLR 645 (Super. Ct. 1990).

§ 16-307. Investigation, report, and recommendation.

(a) Except as provided by section 16-308, upon the filing of a petition the court shall refer the petition for investigation, report, and recommendation to:

- (1) the licensed child-placing agency by which the case is supervised; or
- (2) the Mayor, if the case is not supervised by a licensed child-placing agency.

(b) The investigation, report, and recommendation shall include:

- (1) an investigation of:
 - (A) the truth of the allegations of the petition;
 - (B) the environment, antecedents, and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;
 - (C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and
 - (D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge, including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 3 of the Act of July 26, 1892 (D.C. Code, sec. 3-115).
- (2) a written report to the court of the findings of the investigation; and
- (3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.

(c) The written report submitted to the court shall be filed with, and become part of, the records in the case. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); 1973 Ed., § 16-307; Jan. 2, 1974, 87 Stat. 1061, Pub. L. 93-241, § 2(a); Apr. 30, 1988, D.C. Law 7-104, § 4(d), 35 DCR 147.)

Section references. — This section is referred to in § 16-309.

Legislative history of Law 7-104. — See note to § 16-301.

Appointment of guardian ad litem unnecessary. — Where competing parties in the proceeding are given opportunity for a thorough hearing, and the petition is vigorously advocated and contested, and witnesses are cross-examined, the interests of the adoptee can be fully presented without the appointment of a guardian ad litem. In re Female Infant, App. D.C., 237 A.2d 468 (1968).

Full investigation in surrogate mother situation. — In a surrogate mother situation, a full investigation into the circumstances of the proposed adoption is warranted, including a careful inquiry into the background of the surrogate mother, child, and prospective parents. In re R.K.S., 112 WLR 1117 (Super. Ct. 1984).

Cited in In re J.H.M., 119 WLR 1209 (Super. Ct. 1991); In re L.S., 119 WLR 2249 (Super. Ct. 1991).

§ 16-308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent.

The court may dispense with the investigation, report, and interlocutory decree provided for by this chapter when:

- (1) the prospective adoptee is an adult; or

(2) the petitioner is a spouse of the natural parent of the prospective adoptee and the natural parent consents to the adoption or joins in the petition for adoption.

In the circumstances specified in (2) above, the petition need not contain the information concerning race and religion specified by subparagraphs (4) and (5) of section 16-305. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1; 1973 Ed., § 16-308; Oct. 30, 1975, D.C. Law 1-25, § 3, 22 DCR 2465.)

Section references. — This section is referred to in § 16-307.

Legislative history of Law 1-25. — Law 1-25, the “Stepparent Adoption Facilitation Act,” was introduced in Council and assigned Bill No. 1-122. The Bill was adopted on first and second readings on July 1, 1975, and July 15, 1975, respectively. Signed by the Mayor on August 4, 1975, it was assigned Act. No. 1-37 and transmitted to both Houses of Congress for its review.

Surrogate mother situation warrants full investigation. — A motion to dispense

with the investigation, report, and interlocutory decree is denied in a surrogate mother situation, despite paragraph (2) of this section. This situation warrants a full investigation, under § 16-307, into the circumstances of the proposed adoption, including a careful inquiry into the background of the surrogate mother, the child, and the prospective parents. In re R.K.S., 112 WLR 1117 (Super. Ct. 1984).

Cited in In re R.M.G., App. D.C., 454 A.2d 776 (1982); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 16-309. Adoption proceedings.

(a) Within a period of ninety days, or such time as extended by the court, after a copy of the petition and the order providing for the report is served upon the agency directed to make the investigation, the agency shall make the report and recommendation required by section 16-307 to the court and thereupon the court shall proceed to act upon the petition.

(b) After considering the petition, the consents, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption when it is satisfied that:

(1) the prospective adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner;

(2) the petitioner is fit and able to give the prospective adoptee a proper home and education;

(3) the adoption will be for the best interests of the prospective adoptee; and

(4) the adoption form has been completed by the petitioner pursuant to section 10 of the Vital Records Act of 1981.

In determining whether the petitioner will be able to give the prospective adoptee a proper home and education, the court shall give due consideration to any assurance by the Mayor that he will provide or contribute funds for the necessary maintenance or medical care of the prospective adoptee under an adoption subsidy agreement under section 3 of the Act of July 26, 1892 (D.C. Code, sec. 3-115).

(c) A final decree of adoption may not be entered unless the prospective adoptee has been living with the petitioner for at least six months.

(d) If it appears to be in the interest of the prospective adoptee, the court may enter an interlocutory decree of adoption, which shall by its terms automatically become a final decree of adoption on a day therein named, not

less than six months nor more than one year, from the date of entry of the interlocutory decree, unless in the interim the decree shall have been set aside for cause shown. The supervising agency shall be permitted to visit the adoptee during the period of the interlocutory decree.

(e) The court may revoke its interlocutory decree for good cause shown at any time before it becomes a final decree, either on its own motion or on the motion of one of the parties to the adoption. Before the revocation, notice shall be given thereof to all those persons or parties who were given notice of the original petition for adoption, and an opportunity for all of them to be heard.

(f) All proceedings with reference to adoption shall be of a confidential nature and shall be held in chambers or in a sealed courtroom with as little publicity as the court deems appropriate. (Dec. 23, 1963, 77 Stat. 540, Pub. L. 88-241, § 1; 1973 Ed., § 16-309; Jan. 2, 1974, 87 Stat. 1061, Pub. L. 93-241, § 2(b); Oct. 8, 1981, D.C. Law 4-34, § 29(e), 28 DCR 3271.)

Legislative history of Law 4-34. — Law 4-34, the “Vital Records Act of 1981,” was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

References in text. — The “Vital Records Act of 1981,” referred to in paragraph (4) of subsection (b), is D.C. Law 4-34.

Section 10 of the Act is codified at § 6-209.

Natural father may adopt illegitimate child. — There is no legal force and effect or logic in the notion that a natural father cannot adopt his illegitimate child. In *re J.H.*, App. D.C., 313 A.2d 874 (1974).

Best interests of child are court's primary concern. — The best interests of the child are the court's primary concern in an adoption proceeding. In *re Douglas*, App. D.C., 390 A.2d 1, cert. denied, 439 U.S. 1058, 99 S. Ct. 738, 58 L. Ed. 2d 716 (1978).

In a contested adoption the paragraph (b)(3) standard necessarily encompasses an inquiry into whether termination of the relationship between the child and the natural parents is in the best interest of the child, an inquiry properly guided by the standards set out in § 16-2353(b). In *re D.R.M.*, App. D.C., 570 A.2d 796 (1990).

Subsection (b) poses the ultimate question: whether the adoption will be in best interest of the child. Because the section provides no specific guidance as to this factor, and because of the inherently “elastic” nature of the standard, the court may consider any factor relevant under the circumstances to allow the judge to make an informed and rational judgment, free of bias and favor, as to the least detrimental of the available alternatives. In *re D.R.M.*, App. D.C., 570 A.2d 796 (1990).

The Constitution requires the Court to construe the “best interests” language under the adoption statute, § 16-304(e) and paragraph (b)(3) of this section, to mean that, when a natural father who has not abandoned his “opportunity interest” seeks custody of an infant child whom the mother has surrendered for adoption at birth, he shall be entitled — as under the guardianship statute — to custody if he would be a “fit” parent; unless, the adoptive parents persuade the Court with clear and convincing evidence that failure to terminate the father's parental rights would be detrimental to the best interests of the child. In *re H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

The court granted the adoption of a child to petitioners, contrary to the statutory preference to which the biological father was entitled, where the court concluded adoption was in the best interests of the child because: (1) denial of the petition to adopt would have subjected the child to psychological harm because the biological father intended to lead the child away from petitioners and encourage him to take on a different cultural identity, resulting in a painful dilemma for the child to choose between two culturally different families; (2) adoption was the only way to make secure the child's legal status in petitioners' family, the only family the child knew, and to remove the dilemma for the child of making the choice himself; and (3) the child resided with the petitioners for more than eight years, and a strongly formed emotional relationship existed between the child, petitioners and petitioners' other son. In *re Baby Boy C.*, 120 WLR 1309 (Super. Ct. 1992).

Duties of trial judge. — The trial judge is required to weigh all relevant factors bearing on best interests of child and to make detailed, written findings of fact and separate conclusions of law on each factor considered. In *re D.I.S.*, App. D.C., 494 A.2d 1316 (1985).

Factors in determination of best interests of child. — Psychological parentage and continuity of care are important factors in determining best interests of child. In re D.I.S., App. D.C., 494 A.2d 1316 (1985).

To recognize psychological parentage and continuity of care as the determinative factors in the best interests of the child analysis would run counter to the flexible framework established in the case law for making this critical decision. In re D.I.S., App. D.C., 494 A.2d 1316 (1985).

Appointment of counsel for adoptee. — Appointment of counsel at government expense to represent the interests of the adoptee was not necessary where all of the interests of the adoptee were presented by the witnesses who favored and those who opposed the adoption and the trial court conducted a meaningful interview with the adoptee in chambers. In re Douglas, App. D.C., 390 A.2d 1, cert. denied, 439 U.S. 1058, 99 S. Ct. 738, 58 L. Ed. 2d 716 (1978).

Standard of review. — In reviewing the trial judge's application of the best interests of the child standard, the Court of Appeals will reverse only for an abuse of discretion. In re D.I.S., App. D.C., 494 A.2d 1316 (1985).

Use of the preponderance of the evidence standard was appropriate in determining whether adoption by the natural grandmother or adoption by the foster mother was in the best interests of the child, particularly where the natural father consented to the grandmother's adoption petition. In re D.I.S., App. D.C., 494 A.2d 1316 (1985).

Appealability of orders. — An interlocutory order under subsection (d) is appealable as final order under the doctrine of practical finality. In re R.M.G., App. D.C., 454 A.2d 776 (1982).

Interlocutory decree entered where identity of birth father withheld by birth mother. — Where birth mothers refused to divulge identity of respective birth fathers of their children, and offered some reason for refusal, court entered interlocutory decrees of adoption pursuant to subsection (d) as in the best interests of the adoptees, despite lack of notice to unnamed birth fathers. In re Three Adoption Cases, 118 WLR 645 (Super. Ct. 1990).

Race. — While racial difference is a factor to be considered in an adoption, it cannot be a *per se* basis for refusing to grant an adoption. In re J.H.M., 119 WLR 1209 (Super. Ct. 1991).

In interracial adoption case, equal protection clause does not require strict scrutiny of trial judge's findings. In re D.I.S., App. D.C., 494 A.2d 1316 (1985).

Sexual orientation. — Sexual orientation of petitioners to adoption, to the extent relevant, is to be considered under the factors of this section, which address the fitness of those seeking to adopt and the best interests of the child. In re D.S., 123 WLR 1149 (Super. Ct. 1995).

Restrictions on noncustodial natural parent. — Neither the Constitution nor District of Columbia case law required a judge to resolve a custody dispute in terms of assuring the fewest possible restrictions on a noncustodial natural parent. In re Baby Boy C., App. D.C., 630 A.2d 670 (1993), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

Cited in C.K.C. v. Children's Adoption Resource Exch., 118 WLR 1305 (Super. Ct. 1990); In re L.S., 119 WLR 2249 (Super. Ct. 1991); In re M.N.M., App. D.C., 605 A.2d 921, cert. denied, 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567 (1992); In re G.B., 121 WLR 665 (Super. Ct. 1993).

§ 16-310. Finality of decrees of adoption.

An attempt to invalidate a final decree of adoption by reason of a jurisdictional or procedural defect may not be received by any court of the District, unless regularly filed with the court within one year following the date the final decree became effective. (Dec. 23, 1963, 77 Stat. 540, Pub. L. 88-241, § 1; 1973 Ed., § 16-310.)

"Regularly filed." — Putative father's letter to the court was found to be simply a request for information, and the trial judge correctly ruled that the letter was not a motion or pleading "regularly filed" with the court which this section requires. In re M.N.M., App. D.C., 605 A.2d

921, cert. denied, 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567 (1992).

Cited in In re Three Adoption Cases, 118 WLR 645 (Super. Ct. 1990); C.K.C. v. Children's Adoption Resource Exch., 118 WLR 1305 (Super. Ct. 1990).

§ 16-311. Sealing and inspection of records and papers.

From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1; 1973 Ed., § 16-311.)

Purpose. — The core purpose of this section was to protect adopted children from potential stigmatizing effect of disclosure of facts about their birth status. In re D.E.D., App. D.C., 672 A.2d 582 (1996).

Authenticity of consent to disclosure. — Trial court must be sure that the necessary consents to adoptee's request to examine record of her adoption; in its discretion, the trial court may require whatever proof it thinks necessary to insure the authenticity of consents, including live testimony. In re D.E.D., App. D.C., 672 A.2d 582 (1996).

Disclosure to adult adoptee whose biological parents consent. — The purpose of protecting adopted children from potential stigmatizing effect of disclosure of facts about their birth status would be fully respected if adult adoptee were allowed to examine record of her adoption where both adoptive and biological parents consent. In re D.E.D., App. D.C., 672 A.2d 582 (1996).

Adult adoptees. — An adult, married adoptee seeking her natural parents was entitled to an evidentiary hearing to determine if her adoption records should be open to inspection. In re C.A.B., App. D.C., 384 A.2d 679 (1978).

Denial of access. — Abuse of discretion was not found in denial of access to a sealed report on a proposed adoption. In re S.E.D., App. D.C., 324 A.2d 200 (1974).

No error occurred in refusing petitioners' attorney access to investigate report where the trial judge related to him the findings and the information which had been gathered from the persons petitioners had listed as references. In re Female Infant, App. D.C., 237 A.2d 468 (1968).

Cited in In re Three Adoption Cases, 118 WLR 645 (Super. Ct. 1990).

§ 16-312. Legal effects of adoption.

(a) A final decree of adoption establishes the relationship of natural parent and natural child between adopter and adoptee for all purposes, including mutual rights of inheritance and succession as if adoptee were born to adopter. The adoptee takes from, through, and as a representative of his adoptive parent or parents in the same manner as a child by birth, and upon the death of an adoptee intestate, his property shall pass and be distributed in the same manner as if the adoptee had been born to the adopting parent or parents in lawful wedlock. All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, are cut off, except that when one of the natural parents is the spouse of the adopter, the rights and relations as between adoptee, that natural parent, and his parents and collateral relatives, including mutual rights of inheritance and succession, are in no wise altered.

(b) While it is in force, an interlocutory decree of adoption has the same legal effect as a final decree of adoption. Upon the revocation of an interlocutory decree of adoption, the status of the adoptee, the natural parents of the adoptee, and the petitioners are as though the interlocutory decree were null and void ab initio.

(c) The family name of the adoptee shall be changed to that of the adopter unless the decree otherwise provides, and the given name of the adoptee may be fixed or changed at the same time. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1; 1973 Ed., § 16-312.)

Legislative intent. — The adoption statute, is intended to provide a loving, nurturing home that pursues the best interests of the adopted child after (1) transferring to the adoptive parent all legal rights, duties, and consequences of the parental relationship, (2) severing the rights and obligations of any natural parent who no longer will have custody of the child, and (3) determining all other legal effects of the adoption upon the families of the natural parents and the adoptive parents. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Applicability. — This section is not retroactively applied so as to alter or affect the intention of the testator expressed in the will. O'Connell v. Riggs Nat'l Bank, App. D.C., 475 A.2d 405 (1984).

Adoptee deemed "issue" of adopter in wills of relatives. — Absent any contrary indication of a testator's actual intent, an adopted child should be deemed to be included within the terms of any testamentary gifts to the "issue" of his adoptive parent(s) in the wills of relatives of the adoptive parent(s). Johns v. Cobb, 402 F.2d 636 (D.C. Cir. 1968), cert. denied, 393 U.S. 1087, 89 S. Ct. 876, 21 L. Ed. 2d 781 (1969).

Establishment of natural parent and natural child relationship. — In order to establish the relationship of natural parent and natural child, for all purposes under the law, an individual can either adopt the child under this section, or marry the child's mother and acknowledge the child under § 19-318. Butler v. Metropolitan Life Ins. Co., 500 F. Supp. 661 (D.D.C. 1980), but see, Mobley v. Metropolitan Life Ins. Co., 907 F. Supp. 495 (D.D.C. 1995).

Right to remove adoptee from another state not conferred by decree. — Affirmance of the adoption decree does not confer upon the adoptive parents any legal right to go into another state and remove the adoptee from his natural mother's home without the consent of the proper authorities in that state. In re J.E.G., App. D.C., 357 A.2d 855 (1976).

Application of "cut-off" language of (a). — The "cut-off" language of subsection (a) may be properly construed as directory, and need not be given mandatory construction such that rights must be cut off, if such a result would not be in the best interests of the child. In re L.S., 119 WLR 2249 (Super. Ct. 1991).

Where two women lived together for several

years and entered into a ceremony of commitment, one had a child by artificial insemination and the other had a child by adoption, and they submitted adoption petitions, the cut-off provision of subsection (a) was held inappropriate and not applied. In re L.S., 119 WLR 2249 (Super. Ct. 1991).

Application of "stepparent exception". — The fact that one member of an unmarried same-sex couple already has adopted the child does not create any impediment to both members' joining in the adoption. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

The so-called "stepparent exception" in subsection (a) would apply to prevent termination of the relationship between child and her unmarried natural parent (one half of the same-sex couple by adoption) if his life partner is allowed to adopt the child and live as a family with the adoptive parent and the child. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Effect of adoption of child by adoptive parent's partner. — When one of the natural parents (by birth or adoption) is living in a committed personal relationship with the prospective adoptive parent, then, pursuant to subsection (a) "the rights and relation as between adoptee, that natural [including adoptive] parent, and his [or her] parents and collateral relations, including natural rights of inheritance and succession, are in no wise altered. In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Designation of custodian by incapacitated parent. — Where the natural mother of the minor child was unable to care for him personally by reason of her mental condition, but nevertheless had the capacity to designate a suitable and willing custodian, before rejecting the designated custodian's petition and severing the child's relation with his relatives in the context of a consolidated adoption proceeding, the trial court was to find by clear and convincing evidence both that the custody arrangement chosen by the mother would clearly not be in the best interest of the child and that the parent's consent to adoption was withheld contrary to the child's best interest. In re T.J., App. D.C., 666 A.2d 1 (1995), reh'g denied, App. D.C., 675 A.2d 30 (1995), cert. denied, — U.S. —, 116 S. Ct. 2571, 135 L. Ed. 2d 1087 (1996).

Cited in Doe v. Webster, 606 F.2d 1226 (D.C. Cir. 1979).

§ 16-313. Child as including adopted person.

In the District, "child" or its equivalent in a deed, grant, will, or other written instrument includes an adopted person, unless the contrary plainly appears by the terms thereof, whether the instrument was executed before or after the entry of the interlocutory decree of adoption, if any, or before or after the final decree of adoption became effective. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1; 1973 Ed., § 16-313.)

Adoptee deemed "issue" of adopter in wills of relatives. — Absent any contrary indication of a testator's actual intent, an adopted child should be deemed to be included within the terms of any testamentary gifts to the "issue" of his adopted parent(s) in the wills of relatives of the adoptive parent(s). *Johns v. Cobb*, 402 F.2d 636 (D.C. Cir. 1968), cert. denied, 393 U.S. 1087, 89 S. Ct. 876, 21 L. Ed. 2d 781 (1969); *Read v. Legg*, App. D.C., 493 A.2d 1013 (1985).

Support obligation accruing prior to adoption not extinguished by adoption. — The natural parent's future obligation to continue to pay child support following child's

adoption is extinguished, but the support obligation that accrued during parent-child relationship prior to the child's adoption remains valid even where it has not been reduced to judgment. Even though the adoption terminates any future legal relationship, it does not affect the support obligation that accrued during the tenure of the previously existing parent-child relationship. The obligation of the natural father continues "until the duty of support expires, whether due to the child reaching the age of majority, adoption, or some other legal termination of that duty." *McAllister v. Jennings*, 118 WLR 1305 (Super. Ct. 1990).

§ 16-314. Birth certificates.

(a) Upon the issuance of a final decree of adoption, an adoption form shall be sent to the Registrar pursuant to the Vital Records Act of 1981. Unless otherwise requested in the petition by the adopters, the Registrar shall cause to be made a new record of the birth in the new name with the names of the adopters and shall then cause the original birth certificate and the order of the Court to be sealed and filed. The sealed package may be opened only by order of the Court or by the Registrar to properly administer the Vital Records Act of 1981.

(b) If the adoption occurred outside the District either before or after August 25, 1937, a new certificate of birth shall be made pursuant to section 11 of the Vital Records Act of 1981. The Registrar shall seal the original birth certificate. The sealed original birth certificate may be opened only by order of a court of competent jurisdiction or by the Registrar to properly administer the Vital Records Act of 1981.

(c) If the birth of the adoptee occurred outside the District the clerk of the court shall, upon petition by the adopter, furnish him with a certified copy of the final decree of adoption.

(c-1) If the birth of the adoptee occurred outside of the United States, a new certificate of birth shall be made pursuant to section 11 of the Vital Records Act of 1981.

(d) When an adoption in the District occurred prior to August 25, 1937, the court shall, upon presentation of a motion by a party to the proceedings, order the clerk of the court to seal the records in the proceeding. Upon presentation of a certified copy of the order the Mayor shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then

cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); 1973 Ed., § 16-314; Oct. 8, 1981, D.C. Law 4-34, § 29(f), 28 DCR 3271; Apr. 30, 1988, D.C. Law 7-104, § 4(e), 35 DCR 147; May 21, 1992, D.C. Law 9-101, § 2, 39 DCR 2146.)

Section references. — This section is referred to in § 6-210.

Legislative history of Law 4-34. — See note to § 16-309.

Legislative history of Law 7-104. — See note to § 16-301.

Legislative history of Law 9-101. — Law 9-101, the “Vital Records Adoptive Birth Registration Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-192, which was referred to the Committee on Hu-

man Services. The Bill was adopted on first and second readings on February 4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 23, 1992, it was assigned Act No. 9-173 and transmitted to both Houses of Congress for its review. D.C. Law 9-101 became effective on May 21, 1992.

References in text. — The “Vital Records Act of 1981,” referred to throughout subsections (a), (b), and (c-1), is D.C. Law 4-34. Section 11 of the Act is codified at § 6-210.

§ 16-315. Prior proceedings.

The provisions of this chapter have no effect prior to June 8, 1954, except to the extent that they specifically so provide. They do not affect in any way the rights and relations obtained by any decree of adoption entered prior to June 8, 1954. (Dec. 23, 1963, 77 Stat. 542, Pub. L. 88-241, § 1; 1973 Ed., § 16-315.)

CHAPTER 4. SURROGATE PARENTING CONTRACTS.

Sec.

16-401. Definitions.

16-402. Prohibitions and penalties.

§ 16-401. Definitions.

For the purposes of this chapter, the term:

(1) "Artificial insemination" means the process by which a man's fresh or frozen sperm sample is introduced into a woman's vagina, other than by sexual intercourse, under the supervision of a physician.

(2) "District" means the District of Columbia.

(3) "In vitro fertilization" means a procedure in which an ovum is surgically removed from a genetic mother's ovary and fertilized with the sperm of the genetic father in a laboratory procedure, with the resulting embryo implanted in the uterus of a birth mother.

(4) "Surrogate parenting contract" mean any agreement, oral or written, in which:

(A) A woman agrees either to be artificially inseminated with the sperm of a man who is not her husband, or to be impregnated with an embryo that is the product of an ovum fertilization with the sperm of a man who is not her husband; and

(B) A woman agrees to, or intends to, relinquish all parental rights and responsibilities and to consent to the adoption of a child born as a result of insemination or in vitro fertilization as provided in this chapter. (Mar. 17, 1993, D.C. Law 9-219, § 2, 40 DCR 582; Apr. 9, 1997, D.C. Law 11-255, § 18(a), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255, in (4)(B), substituted "rights" for "right" and substituted "chapter" for "act."

Legislative history of Law 9-219. — Law 9-219, the "Surrogate Parenting Contracts Act of 1992," was introduced in Council and assigned Bill No. 9-66, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 4, 1993, it was assigned Act No. 9-350 and transmitted to both Houses of Congress for its review. D.C. Law 9-219 became effective on March 17, 1993.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

References in text. — "This act," referred to at the end of (4)(B), is D.C. Law 9-219, which is codified as § 16-401 and 16-402.

§ 16-402. Prohibitions and penalties.

(a) Surrogate parenting contracts are prohibited and rendered unenforceable in the District.

(b) Any person or entity who or which is involved in, or induces, arranges, or otherwise assists in the formation of a surrogate parenting contract for a fee, compensation, or other remuneration, or otherwise violates this section, shall be subject to a civil penalty not to exceed \$10,000 or imprisonment for not more

than 1 year, or both. (Mar. 17, 1993, D.C. Law 9-219, § 2, 40 DCR 582; Apr. 9, 1997, D.C. Law 11-255, § 18(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 deleted the comma following “\$10,000” in (b).

Legislative history of Law 9-219. — See note to § 16-401.

Legislative history of Law 11-255. — See note to § 16-401.

Retroactivity of section. — Although sur-

rogate parenting contracts are illegal in the District of Columbia as of March 17, 1993, where the filing of petitions predated that date, this policy played no part in a decision based entirely on jurisdictional considerations. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

ATTACHMENT AND GARNISHMENT

CHAPTER 5. ATTACHMENT AND GARNISHMENT.

Subchapter I. Attachment and Garnishment Generally.

- Sec.
16-501. Attachment before judgment; affidavit and bond.
16-502. Service of notice; publication.
16-503. Attachment for debts not due.
16-504. Additional attachments.
16-505. Sufficiency of plaintiff's bond.
16-506. Traversing affidavits; quashing writ of attachment; trial of issues.
16-507. Property subject to attachment; liens; priorities.
16-508. Attachment of real property.
16-509. Attachment of personal property; undertaking by defendant or person in possession.
16-510. Release of property or credits from attachment; sufficiency of undertaking.
16-511. Attachment of credits or partnership interest; retention of property or credits by garnishee.
16-512. Attachment and levy upon wages of nonresident.
16-513. Advance payment of wages to avoid attachment or garnishment.
16-514. Credits or property held for two or more persons or in representative capacity.
16-515. Attachment of judgments and money or property in hands of marshal.
16-516. Attachment of money or property in hands of executor or administrator.
16-517. Attachment of other property in replevin action.
16-518. Preservation of property; sale; receiver.
16-519. Defenses by garnishee.
16-520. Defending against the attachment; trial of issues.
16-521. Interrogatories to garnishee; oral examination.
16-522. Traverse of garnishee's answers; trial of issue; costs and attorney's fee.
16-523. Claims to attached property.
16-524. Judgment generally; condemnation of attached property.
16-525. Condemnation and sale of property; proceeds of sale under interlocutory order.
16-526. Judgment against garnishee.
16-527. Judgment in case of undertaking for retention of property or credits.
16-528. Judgment protects garnishee.
16-529. Attachment in actions for fraudulent conveyances.
16-530. Time for trial of issues.

Sec.

- 16-531. Attachment dockets; index of attachments.
16-532. Other remedies of judgment creditor.
16-533. Attachment proceedings in Superior Court.

Subchapter II. Attachment and Garnishment After Judgment in Aid of Execution.

- 16-541. Definition and applicability.
16-542. Issuance of attachment after judgment; costs.
16-543. Revival of judgment unnecessary.
16-544. Property subject to attachment.
16-545. Multiple attachments against same judgment debtor.
16-546. Attachments of credits.
16-547. Retention of property or credits by garnishee.
16-548. Attachment of judgments and money or property in hands of marshal.
16-549. Attachment of money or property in hands of executor or administrator.
16-550. Preservation of property; sale.
16-551. Defending against the attachment; trial of issues.
16-552. Interrogatories to garnishee; oral examination.
16-553. Traverse of garnishee's answers; trial of issue; costs and attorney's fee.
16-554. Claims to attached property.
16-555. Condemnation and sale of property; proceeds of sale under interlocutory order.
16-556. Judgment against garnishee.

Subchapter III. Attachment and Garnishment of Wages, etc.

- 16-571. Definitions.
16-572. Attachment of wages; percentage limitations; priority of attachments.
16-573. Employer's duty to withhold and make payments; percentage.
16-574. Judgment creditor to file receipts, in court, of amount collected.
16-575. Judgment against employer-garnishee for failure to pay percentages.
16-576. Lapse of attachment upon resignation or dismissal of employee.
16-577. Applicability of per centum limitations to judgment for support.
16-578. Superior Court judgments; lapse; validity.
16-579. Payments by employer-garnishee where employee has no salary or salary inadequate for services rendered.

Sec.

16-580. Quashing attachment where judgment obtained to hinder just claims.

16-581. Rules of procedure.

16-582. Attachments to which this subchapter is applicable.

Sec.

16-583. No garnishment before judgment.

16-584. No discharge from employment for garnishment.

Subchapter I. Attachment and Garnishment Generally.

§ 16-501. Attachment before judgment; affidavit and bond.

(a) This section applies to any civil action in the United States District Court of the District of Columbia or the Superior Court of the District of Columbia, for the recovery of:

- (1) specific personal property;
- (2) a debt; or
- (3) damages for the breach of a contract, express or implied.

(b) In an action specified by subsection (a) of this section, the plaintiff, his agent, or attorney, may file an affidavit as provided by subsections (c) and (d) of this section either at the commencement of the action or pending the action.

(c) The affidavit shall comply with the following requirements:

- (1) show the grounds of plaintiff's claim;
- (2) set forth that plaintiff has a just right to recover what is claimed in his complaint;
- (3) where the action is to recover specific personal property, state the nature and, according to affiant's belief, the value of the property and the probable amount of damages to which plaintiff is entitled for the detention thereof;
- (4) where the action is to recover a debt, state the amount thereof; and
- (5) where the action is to recover damages for breach of a contract set out, specifically and in detail, the breach complained of and the actual damage resulting therefrom.

(d) The affidavit shall also state one of the following facts with respect to defendant:

- (1) defendant is a foreign corporation or is not a resident of the District, or has been absent therefrom for at least six months;
- (2) he evades the service of ordinary process by concealing himself or temporarily withdrawing himself from the District;
- (3) he has removed or is about to remove some or all of his property from the District, so as to defeat just demands against him;
- (4) he has assigned, conveyed, disposed of, or secreted, or is about to assign, convey, dispose of, or secrete his property with intent to hinder, delay, or defraud his creditors; or
- (5) he fraudulently contracted the debt or incurred the obligation respecting which the action is brought.

(e) Before a writ of attachment and garnishment is issued, the plaintiff shall first file in the clerk's office a bond, executed by himself or his agent, with security to be approved by the clerk, in twice the amount of his claim, conditioned to make good to the defendant all costs and damages which he may

sustain by reason of the wrongful suing out of the attachment; except that in any case in which the plaintiff states in his affidavit that the value of specified property to be levied upon is less than the amount of his claim, the court may set the amount of such bond in an amount twice the value of the property being attached, and, notwithstanding the provisions of subsection (f) of this section, only the property so specified shall be levied upon; provided, that the United States marshal may, in his discretion, when levying upon such property, have the same appraised by an independent appraiser retained by the marshal at the expense of the plaintiff. Any such appraisal shall be made at the time the marshal levies upon the property, and the appraiser shall accompany him for such purpose. If such appraisal has been made, then only such property as may have a value not exceeding one-half of the amount of the bond shall be attached. In the event the appraised value of the property shall be more than one-half of the amount of the bond, the marshal may refuse to execute the writ unless and until the amount of the bond is increased so as to be at least twice the value of the property to be attached.

(f) If the plaintiff files an affidavit and bond as provided by this section, the clerk shall issue a writ of attachment and garnishment, to be levied upon as much of the lands, tenements, goods, chattels, and credits of the defendant as may be necessary to satisfy the claim of the plaintiff. (Dec. 23, 1963, 77 Stat. 543, Pub. L. 88-241, § 1; Aug. 6, 1965, 79 Stat. 447, Pub. L. 89-113, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(1); 1973 Ed., § 16-501.)

Cross references. — As to applicability of attachment provisions to attachment proceedings in Superior Court, see § 16-533.

As to attachment and garnishment after judgment in aid of execution, see §§ 16-541 to 16-555.

As to exemption of wrongful death damages from appropriation to payment of debts and liabilities of deceased, see § 16-2703.

As to attachment of goods covered by a negotiable document, see § 28-7-602.

As to bonds and undertakings, see § 28-2501 et seq.

As to exemption of teacher's retirement annuities from assignment or attachment, see § 31-1217.

As to exemption of certain insurance policies or proceeds from attachment and garnishment, see §§ 35-522 and 35-523.

As to exemption of fraternal benefit association benefits from attachment and garnishments, see § 35-1211.

As to attachment to enforce landlord's lien, see § 45-1414.

As to exemption of unemployment compensation benefits from levy and attachment, see § 46-119.

Section references. — This section is referred to in §§ 16-502, 16-503, 16-505, 16-512, and 28-3107.

Constitutionality of subchapter. — This subchapter, as it applies to a nonresident wage

earner, is narrowly drawn to meet an unusual condition and is not violative of due process. *Tucker v. Burton*, 319 F. Supp. 567 (D.D.C. 1970).

Compliance. — Strict compliance with statutory procedures is required because a writ of attachment before judgment is a harsh and drastic remedy. *Jack Dev., Inc. v. Howard Eales, Inc.*, App. D.C., 388 A.2d 466 (1978).

Doctrine of forum non conveniens applicable. — Where the only connection a suit on a note has with a District forum is that the garnishee-employer has a resident agent in the District upon whom service of a writ of garnishment is obtained, the case is appropriate for application of the doctrine of forum non conveniens. *Midland Fin. Co. v. Green*, App. D.C., 279 A.2d 518 (1971).

Dismissal on grounds of forum non conveniens inappropriate. — By reason of the levy of attachment, at least some limited jurisdiction could constitutionally be asserted by courts relating to an entirely foreign controversy between the parties, and the trial court abused its discretion in dismissing the complaint on grounds of forum non conveniens because it had jurisdiction to simply stay the action pending completion of litigation in Europe. *Barclays Bank v. Tsakos*, App. D.C., 543 A.2d 802 (1988).

Rules of court. — District Court may adopt reasonable rules of practice governing the as-

section of a claim of wrongful attachment. *Schmidt v. Smith*, 344 F.2d 168 (D.C. Cir. 1965).

Purpose of bond. — The purpose of requiring attachment bond is to provide security on which recovery by attachment debtors may be had in the event of improper use of attachment or when damages are sustained by reason of attachment. *Metro Rentals, Inc. v. Wagner*, App. D.C., 435 A.2d 1072 (1981).

Bond not jurisdictional. — Filing of proper bond is not jurisdictional. *Metro Rentals, Inc. v. Wagner*, App. D.C., 435 A.2d 1072 (1981).

Bond in insufficient amount. — Bonds tendered in an amount found to be insufficient do not render the attachment void; rather amendment is in order upon proper application of the parties. *Metro Rentals, Inc. v. Wagner*, App. D.C., 435 A.2d 1072 (1981).

Remedy available where defendant unsatisfied with security provided. — If a defendant is unsatisfied with the amount of security provided, his remedy is to first pursue an application under § 16-505, and to thereafter move to quash in the event of failure to comply with any order of the court. *Metro Rentals, Inc. v. Wagner*, App. D.C., 435 A.2d 1072 (1981).

Restraining order superior to subsequent prejudgment attachment. — A restraining order barring withdrawal of any funds from a bank checking account is a sufficient seizure of the fund to give the court in rem jurisdiction and gives the obtainor of the order a claim superior to that of a subsequent pre-

judgment attachment. *Trigo v. Riggs Nat'l Bank*, App. D.C., 338 A.2d 445 (1975).

Party aggrieved by unsuccessful attachment may assert counterclaim. — If a party aggrieved by an unsuccessful attachment timely asserts his claim to costs and damages in a pleading consonant with the nature of the claim, he may pursue it in the same case, but this does not disable the plaintiff from utilizing the defensive rights available to him were an independent action filed. *Schmidt v. Smith*, 344 F.2d 168 (D.C. Cir. 1965).

Recordation of deed by purchaser prior to perfection of attachment. — The recording of the deed by purchaser of the property, prior to the perfection of an attachment by a creditor of the owner, terminated the inchoate lien on the property which had commenced with the delivery of the writ of attachment to the marshal, thus, the property was transferred free of the writ of attachment which had been sought against the owner, and that writ must be quashed and released. *Cape Cod Bank & Trust Co. v. Avram*, 697 F. Supp. 8 (D.D.C. 1988).

Cited in *Smith v. First Nat'l Bank*, App. D.C., 220 A.2d 333 (1966); *Kelly Adjustment Co. v. Boyd*, App. D.C., 342 A.2d 361 (1975); *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979); *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982); *McQueen v. Lustine Realty Co.*, App. D.C., 547 A.2d 172 (1988); *First Sav. Bank v. Barclays Bank*, App. D.C., 618 A.2d 134 (1992).

§ 16-502. Service of notice; publication.

(a) A writ issued pursuant to section 16-501 shall require the marshal to serve a notice on the defendant, if he is found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in the court on or before the twentieth day, exclusive of Sundays and legal holidays after service of the notice, and show cause, if any there be, why the property so attached should not be condemned and execution thereof had. The marshal's return shall show the fact of the service.

(b) If the defendant is returned "Not to be found," the notice shall be given by publication to the following effect, namely:

In the United States District Court (Superior Court of the District of Columbia) for the District of Columbia.

A B, plaintiff,

versus

Civil Action No. _____.

C D, defendant,

The object of this suit is to recover (here state it briefly) and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim.

It is, therefore, this ____ day of _____, ordered that the defendant appear in this court or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why the condemnation should not be had; otherwise the suit will be proceeded with as in case of default.

By the court:

_____, Judge.

(c) The order shall be published at least once a week for three successive weeks or oftener, or for such further time and in such manner as the court orders. (Dec. 23, 1963, 77 Stat. 544, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(1); 1973 Ed., § 16-502.)

Section references. — This section is referred to in §§ 16-508, 16-511, and 28-3107.

Substituted service. — Service of process was proper by a process server who went to premises to serve tenant and who, after being informed that tenant was in Florida and that tenant's employee was authorized to receive service, left the summons and complaint with the employee. *Espenschied v. Mallick*, App. D.C., 633 A.2d 388 (1993).

Section requires notice of perfected levy. — Where a writ of attachment before judgment was delivered to the marshal in April and a copy mailed to the defendant at the same time, but the levy was not perfected until the following February, mailing the copy to the defendant in June was insufficient to comply with this section. *Jack Dev., Inc. v. Howard Eales, Inc.*, App. D.C., 388 A.2d 466 (1978).

Effect of delivery of writ to marshal and posting of property. — Where writ of attachment before judgment was issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ

until the following February, delivery of the writ to the marshal did create an inchoate lien on the defendant's property, but mere posting of the property did not comply with the notice procedures mandated by this section so that the defendant had no effective notice of the writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.*, App. D.C., 388 A.2d 466 (1978).

Recordation of deed by purchaser prior to perfection of attachment. — The recording of the deed by purchaser of the property, prior to the perfection of an attachment by a creditor of the owner, terminated the inchoate lien on the property which had commenced with the delivery of the writ of attachment to the marshal, thus, the property was transferred free of the writ of attachment which had been sought against the owner, and that writ must be quashed and released. *Cape Cod Bank & Trust Co. v. Avram*, 697 F. Supp. 8 (D.D.C. 1988).

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982).

§ 16-503. Attachment for debts not due.

A creditor may maintain an action and have an attachment against his debtor's property and credits, where his debt is not yet due and payable, if the plaintiff, his agent, or attorney files in the clerk's office, at the commencement of the action, an affidavit, supported by testimony of one or more witnesses, showing the amount and justice of the claim and the time when it will be payable, and also setting forth that the defendant has removed or is removing or intends to remove a material part of his property from the District with the intent or to the effect of defeating just claims against him if only the ordinary process of law is used to obtain judgment against him, and if he also complies with the condition as to filing a bond prescribed by section 16-501. The plaintiff may not have judgment before his claim becomes due. If the attachment is quashed the action shall be dismissed, but without prejudice to a future action. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1; 1973 Ed., § 16-503.)

Cross references. — As to service by publication on nonresidents and absent defendants, see § 13-336.

Section references. — This section is referred to in § 28-3107.

Cited in Barclays Bank v. Tsakos, App. D.C., 543 A.2d 802 (1988).

§ 16-504. Additional attachments.

Upon the application of the plaintiff, his agent, or attorney, other attachments founded on the original affidavits may be issued from time to time, to be directed, executed, and returned in the same manner as the original, and without further publication, against a nonresident or absent defendant, and without additional bond, unless required by the court. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1; 1973 Ed., § 16-504.)

Section references. — This section is referred to in § 28-3107.

§ 16-505. Sufficiency of plaintiff's bond.

The defendant or any other person interested in the proceedings who is not satisfied with the sufficiency of the surety or with the amount of the penalty named in the bond filed pursuant to section 16-501, may apply to the court for an order requiring the plaintiff to give an additional bond in such sum and with such security as may be approved by the court. If the plaintiff fails to comply with any such order the court may order the attachment to be quashed and any property attached or its proceeds to be returned to the defendant or otherwise disposed of, as to the court may seem proper. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1; 1973 Ed., § 16-505.)

Section references. — This section is referred to in § 28-3107.

Bond in insufficient amount. — Bonds tendered in an amount found to be insufficient

do not render the attachment void; rather amendment is in order upon proper application of the parties. Metro Rentals, Inc. v. Wagner, App. D.C., 435 A.2d 1072 (1981).

§ 16-506. Traversing affidavits; quashing writ of attachment; trial of issues.

If the defendant files affidavits traversing the affidavits filed by the plaintiff the court shall determine whether the facts set forth in the plaintiff's affidavits as ground for issuing the attachment are true, and whether there was just ground for issuing the attachment. When, in the opinion of the court, the proofs do not sustain the affidavit of the plaintiff, his agent, or attorney, the court shall quash the writ of attachment. This issue may be tried by the court or a judge at chambers after three days' notice. The issue may be tried as well upon oral testimony as upon affidavits. If the court deems it expedient, a jury may be impaneled to try the issue. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1; 1973 Ed., § 16-506.)

Cross references. — As to garnishee being entitled to benefit of this section, see § 16-529.

Section references. — This section is referred to in §§ 16-529 and 28-3107.

Matters allowed to be traversed by non-resident wage earner. — A nonresident wage earner may in her affidavit traverse any matter contained in the plaintiff's affidavit, including but not limited to: (1) The grounds of the plaintiff's action; (2) whether plaintiff has a

just right to recover what is claimed in the complaint; (3) whether the contract sued on was breached and the damages resulting therefrom; and (4) whether the wage earner is a nonresident of the District. *Tucker v. Burton*, 319 F. Supp. 567 (D.D.C. 1970).

§ 16-507. Property subject to attachment; liens; priorities.

(a) An attachment may be levied on the lands and tenements, and personal chattels of the defendant not exempt by law, whether in the defendant's or a third person's possession, and whether the defendant's title to the property is legal or equitable, and upon his credits in the hands of a third person, whether due and payable or not, and upon his undivided interest in a partnership business.

(b) An attachment shall be a lien on the property attached from the date of its delivery to the marshal. When different persons obtain attachments against the same defendant the priorities of the liens of the attachments shall be according to the dates when they were so delivered to the marshal. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1; 1973 Ed., § 16-507.)

Section references. — This section is referred to in § 28-3107.

Only ascertainable amount subject to garnishment. — Under this section, it is necessary that the garnishment reach a fund or credits actually due and ascertainable in amount in order to be subject to condemnation. *Cummings Gen. Tire Co. v. Volpe Constr. Co.*, App. D.C., 230 A.2d 712 (1967).

Ineffectual garnishment cannot prevail over subsequent successful garnishment. — Where a garnishment is ineffectual due to the uncertainty of the debt, this garnishment cannot prevail in the face of a subsequent garnishment by another which actually succeeds in reaching a sum certain owed by the same garnishee. *Cummings Gen. Tire Co. v. Volpe Constr. Co.*, App. D.C., 230 A.2d 712 (1967).

Lien inchoate where defendant without effective notice of writ. — Where writ of attachment before judgment was issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ until the following February, delivery of the writ to the marshal did create an inchoate lien on the defendant's property, but mere posting of the property did not comply with the notice procedures mandated by §§ 16-502 and 16-508 so that the defendant had no effective notice of the writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.*, App. D.C., 388 A.2d 466 (1978).

Restraining order superior to subsequent prejudgment attachment. — A restraining order barring withdrawal of any funds from a bank checking account is a sufficient seizure of the fund to give the court in rem jurisdiction and gives the obtainor of the order a claim superior to that of a subsequent prejudgment attachment. *Trigo v. Riggs Nat'l Bank*, App. D.C., 338 A.2d 445 (1975).

Claims against insurance policies. — Claims against insurance policies may be garnished only after entry of judgment against the insured. *Rapid Rentals, Inc. v. Myers*, 115 WLR 2453 (Super. Ct. 1987).

Recordation of deed by purchaser prior to perfection of attachment. — The recording of the deed by purchaser of the property, prior to the perfection of an attachment by a creditor of the owner, terminated the inchoate lien on the property which had commenced with the delivery of the writ of attachment to the marshal, thus, the property was transferred free of the writ of attachment which had been sought against the owner, and that writ must be quashed and released. *Cape Cod Bank & Trust Co. v. Avram*, 697 F. Supp. 8 (D.D.C. 1988).

Cited in United States v. Thornton, 672 F.2d 101 (D.C. Cir. 1982); *Rab v. Safeco Ins. Co. of Am.*, App. D.C., 556 A.2d 1072 (1989).

§ 16-508. Attachment of real property.

An attachment is sufficiently levied on the lands and tenements of the defendant by:

(1) mentioning and describing the property in an indorsement on the attachment, made by the officer to whom it is delivered for service, to the following effect:

“Levied on the following estate of the defendant, A B, to wit: (Here describe) this ____ day of _____. C D, Marshal.”; and

(2) serving a copy of the attachment, with the indorsement, and the notice required by section 16-502, on the person, if any, in possession of the property. (Dec. 23, 1963, 77 Stat. 546, Pub. L. 88-241, § 1; 1973 Ed., § 16-508.)

Section references. — This section is referred to in § 28-3107.

Section requires notice of perfected levy. — Where a writ of attachment before judgment was delivered to the marshal in April and a copy mailed to the defendant at the same time, but the levy was not perfected until the following February, mailing the copy to the defendant in June was insufficient to comply with this section. *Jack Dev., Inc. v. Howard Eales, Inc.*, App. D.C., 388 A.2d 466 (1978).

Lien inchoate where defendant without effective notice of writ. — Where writ of attachment before judgment issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ until the following February, delivery of the writ to the marshal did create an inchoate lien on the defendant's property, but mere posting of the property did not comply with the notice procedures mandated by § 16-502 and this section so that the defendant had no effective notice of the writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.*, App. D.C., 388 A.2d 466 (1978).

Bona fide purchaser took free of attachment where no effective notice. — Where a bona fide purchaser took property by valid transfer without notice of a writ of attachment against the property, and the transfer occurred before the transferor himself had been given notice of a sufficiently levied writ of attachment, the purchaser took the property free of the writ which had been sought against the transferor, and the writ should have been quashed. *Jack Dev., Inc. v. Howard Eales, Inc.*, App. D.C., 388 A.2d 466 (1978).

The recording of the deed by purchaser of the property, prior to the perfection of an attachment by a creditor of the owner, terminated the inchoate lien on the property which had commenced with the delivery of the writ of attachment to the marshal, thus, the property was transferred free of the writ of attachment which had been sought against the owner, and that writ must be quashed and released. *Cape Cod Bank & Trust Co. v. Avram*, 697 F. Supp. 8 (D.D.C. 1988).

§ 16-509. Attachment of personal property; undertaking by defendant or person in possession.

(a) An attachment shall be levied upon personal chattels by the officer taking them into his possession and custody, unless the defendant gives the officer his undertaking to be filed in the cause, with sufficient security, substantially in the form set forth in subsection (b) of this section, or unless the person in whose possession the property is attached gives the officer his undertaking to be filed in the cause substantially in the form set forth in subsection (c) of this section. In cases where such undertakings are given, the attachment is sufficiently levied by the taking of the undertaking.

(b) An undertaking by the defendant shall contain the substance of the following form:

A B, plaintiff,

versus

Civil Action No. _____.

C D, defendant.

The defendant and _____, his surety, in consideration of the discharge from the custody of the marshal of the property seized by him, upon the attachment sued out against the defendant, on the _____ day of _____, anno Domini nineteen hundred _____, in the above entitled cause, appear, and submitting to the jurisdiction of the court, hereby undertake, for themselves and each of them, their and each of their heirs, executors, and administrators, or successors or assigns, to abide by and perform the judgment of the court in the premises in relation to the property, which judgment may be rendered against any or all the parties whose names are hereto signed.

(Signed)

C D.

E F.

(c) An undertaking by the person in whose possession the property is attached shall contain the substance of the following form:

A B, plaintiff,

versus

Civil Action No. _____.

C D, defendant.

Whereas by virtue of an attachment issued in the above-entitled suit, the United States marshal for the District of Columbia has attached certain property in the hands of the undersigned E F, as garnishee, namely, (here describe) of the value of _____ dollars; and now, therefore, E F and G H, as surety, appearing in the action, and submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, and administrators to abide by the judgment of the court in relation to said property, and that if the same shall be condemned to satisfy the claim of the plaintiff, judgment may be rendered against all the undersigned for the value of the property and costs, to be executed against them, and each of them, unless the property shall be forthcoming to satisfy the judgment of condemnation.

(Signed)

E F.

G H.

The recital of the undertaking in this subsection shall contain a sufficient description of the property and its value ascertained by an appraisal to be made under direction of the officer and returned with the writ. (Dec. 23, 1963, 77 Stat. 546, Pub. L. 88-241, § 1; 1973 Ed., § 16-509.)

Section references. — This section is referred to in §§ 16-510, 16-527, and 28-3107.

Effect of bond and undertaking under this section. — The effect of a bond and an undertaking under this section is the complete discharge of the attached property from the custody of the law, and the substitution therefor of the personal obligation of the bondsman. *Apostolides v. Colecchia*, App. D.C., 260 A.2d 685 (1970).

Defendant who deposits cash into court acts as surety for all codefendants. — Where a defendant, pursuant to a court order issued in lieu of a writ of attachment, deposits cash into the court, she does so not only for

herself as defendant but also for her codefendants as surety and she is bound to pay any judgment rendered in favor of the plaintiff to the extent of the appraised value of the attached property. *Apostolides v. Colecchia*, App. D.C., 260 A.2d 685 (1970).

Failure of plaintiff to post bond does not release deposit. — Even though no superseas bond is posted by the plaintiff on his appeal, this does not amount to a change in circumstance which would warrant release of a cash deposit made by the defendant pursuant to a court order issued in lieu of a writ of attachment. *Apostolides v. Colecchia*, App. D.C., 260 A.2d 685 (1970).

§ 16-510. Release of property or credits from attachment; sufficiency of undertaking.

(a) Either the defendant or the person in whose possession the property is attached may obtain a release of the property from the attachment, after it has been taken into the custody of the marshal and the writ has been returned, by giving the undertaking required of him by section 16-509, with security to be approved by the court.

(b) The plaintiff may except to the sufficiency of the undertaking accepted by the marshal and, if the exceptions are sustained, the court shall require a new undertaking, with sufficient surety, by a day to be named, in default of which the marshal shall be liable to the plaintiff on his official bond for any loss sustained by the plaintiff through the default.

(c) Either the defendant or the person in whose possession credits are attached may obtain a release of the credits from the attachment by filing an undertaking with security to be approved by the court. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1; 1973 Ed., § 16-510.)

Section references. — This section is referred to in §§ 16-527 and 28-3107.

Effect of bond and undertaking under this section. — The effect of a bond and an undertaking under this section is the complete discharge of the attached property from the custody of the law, and the substitution therefor of the personal obligation of the bondsman. *Apostolides v. Colecchia*, App. D.C., 260 A.2d 685 (1970).

Defendant who deposits cash into court acts as surety for all codefendants. — Where a defendant, pursuant to a court order issued in lieu of a writ of attachment, deposits cash into the court, she does so not only for

herself as defendant but also for her codefendants as surety and she is bound to pay any judgment rendered in favor of the plaintiff to the extent of the appraised value of the attached property. *Apostolides v. Colecchia*, App. D.C., 250 A.2d 685 (1970).

Failure of plaintiff to post bond does not release deposit. — Even though no supersedeas bond is posted by the plaintiff on his appeal, this does not amount to a change in circumstance which would warrant release of a cash deposit made by the defendant pursuant to a court order issued in lieu of a writ of attachment. *Apostolides v. Colecchia*, App. D.C., 260 A.2d 685 (1970).

§ 16-511. Attachment of credits or partnership interest; retention of property or credits by garnishee.

(a) An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment, besides the notice required by section 16-502. The undivided interest of the defendant in a partnership business may be levied upon by a similar service on the defendant's partner or partners.

(b) Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period, the garnishee shall incur no liability for the retention. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1; 1973 Ed., § 16-511.)

Section references. — This section is referred to in §§ 16-515 and 28-3107.

§ 16-512. Attachment and levy upon wages of nonresident.

An attachment issued under section 16-501 solely on the ground that the defendant is not a resident of the District of Columbia and levied upon wages as defined in section 16-571 shall be subject to the provisions of subchapter III of this chapter; except that the employer-garnishee shall pay over the wages withheld pursuant to that subchapter only pursuant to the order of the court which has jurisdiction of the case. In applying the provisions of that subchapter to any such attachment, the term “judgment debtor”, as used therein, means the defendant in the case in which the attachment is issued; and the term “judgment creditor”, as used therein, means the plaintiff in such case. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1; 1973 Ed., § 16-512.)

Cross references. — As to exemption from attachment of wages of nonresident in certain cases, see § 15-503.

Section references. — This section is referred to in § 28-3107.

Cited in *Tucker v. Burton*, 319 F. Supp. 567 (D.D.C. 1970); *Ausbrooks v. Ausbrooks*, App. D.C., 493 A.2d 324 (1985).

§ 16-513. Advance payment of wages to avoid attachment or garnishment.

It is unlawful for an employer to pay salary or earnings to an employee in advance of the time they are due and payable, for the purpose of avoiding or preventing an attachment or garnishment against the earnings or salary of the employee, and such an advance payment, as to the attaching creditor, is void.

After the service of one writ of attachment or garnishment on a judgment against an employer, any payment of salary or earnings thereafter before the time when the salary or earnings are due and payable made within a period of six months after the date of service of the writ or before the earlier satisfaction of the judgment, whichever is the earlier, is as to such attaching creditor presumed to be in violation of this section and casts upon the employer the burden of proving that the advance payment or payments were not for the purpose of avoiding the attachment of the salary or earnings. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1; 1973 Ed., § 16-513.)

Section references. — This section is referred to in § 28-3107.

§ 16-514. Credits or property held for two or more persons or in representative capacity.

When a writ of attachment is served on a garnishee, and the garnishee holds a credit or property for two or more persons, including the person whose credit or property is sought to be attached, or holds a credit or property for a person as agent or trustee or in any other representative capacity without designation of the principal or beneficiary, the credit or property is not subject to withdrawal by any person, but shall be held by the garnishee until the

attachment is dismissed or otherwise disposed of by the court. If the credit or property is condemned, payment or delivery thereof as ordered by the court is a complete discharge of the garnishee from all liability to any person in respect of the credit or property. The provisions of this section do not apply to a credit or property of a partnership. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1; 1973 Ed., § 16-514.)

Section references. — This section is referred to in § 28-3107.

Cited in In re Hessler, App. D.C., 549 A.2d 700 (1988).

§ 16-515. Attachment of judgments and money or property in hands of marshal.

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that directed by section 16-511 upon the debtor owing the debts. Execution may issue for the enforcement of the judgment or decree, notwithstanding the attachment, but the money collected upon the execution shall be paid into court to abide the event of the proceedings in attachment and applied as the court directs.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1; 1973 Ed., § 16-515.)

Section references. — This section is referred to in § 28-3107.

§ 16-516. Attachment of money or property in hands of executor or administrator.

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Superior Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(2); 1973 Ed., § 16-516.)

Section references. — This section is referred to in § 28-3107.

§ 16-517. Attachment of other property in replevin action.

Where the action is to replevy specific personal property and it has not been replevied, other property may be attached in the action to recover damages and costs, and if a judgment is rendered for damages and costs, it shall carry the

same rights as other judgments. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1; 1973 Ed., § 16-517.)

Section references. — This section is referred to in § 28-3107.

§ 16-518. Preservation of property; sale; receiver.

The court may make all orders necessary for the preservation of the property attached during the pendency of the action. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

When it seems expedient, the court may appoint a receiver to take possession of the property. The receiver shall give bond for the due performance of his duties, and, under the direction of the court, shall have the same powers and perform the same duties as a receiver appointed according to the practice in civil actions. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1; 1973 Ed., § 16-518.)

Section references. — This section is referred to in § 28-3107.

§ 16-519. Defenses by garnishee.

A garnishee in an attachment proceeding may make any defense available to the defendant in the action in which the garnishment is issued. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1; 1973 Ed., § 16-519.)

Section references. — This section is referred to in § 28-3107.

Doctrine of forum non conveniens applicable. — Where the only connection a suit on a note has with a District forum is that the garnishee-employer has a resident agent in the

District upon whom service of a writ of garnishment is obtained, the case is appropriate for the application of the doctrine of forum non conveniens. *Midland Fin. v. Green*, App. D.C., 279 A.2d 518 (1971).

§ 16-520. Defending against the attachment; trial of issues.

A defendant, any garnishee, party to a forthcoming undertaking, or an officer who might be adjudged liable to the plaintiff by reason of the undertaking being adjudged insufficient, or a stranger to the action who may make claim to the property attached, may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact made may be tried with a jury if any party so desires. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1; 1973 Ed., § 16-520.)

Section references. — This section is referred to in §§ 16-522, 16-529, and 28-3107.

Right of intervention by principal or cestui que trust. — The right of intervention by a principal or a cestui que trust to assert the

defense that the funds on deposit in the debtor's name are held by him as trustee is well settled, the only restriction being that the intervenor must have an interest in the attached property by way of lien or otherwise, or by claim

of title to the property. *Gay v. Peoples Hdwe., Inc.*, App. D.C., 221 A.2d 923 (1966).

Inc., App. D.C., 606 A.2d 1027 (1992); *Kuper v. Woodward*, App. D.C., 684 A.2d 783 (1996).

Cited in *Visions Found., Inc. v. Falcon Color,*

§ 16-521. Interrogatories to garnishee; oral examination.

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served on any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment, or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers under oath to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1; 1973 Ed., § 16-521.)

Section references. — This section is referred to in § 28-3107.

§ 16-522. Traverse of garnishee's answers; trial of issue; costs and attorney's fee.

If any garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's claim, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16-520. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1; 1973 Ed., § 16-522.)

Section references. — This section is referred to in § 28-3107.

§ 16-523. Claims to attached property.

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same, acquired before the levy of the attachment. The court, without other pleading, shall try the issues raised by the claim, with a jury if either party so requests, and make all orders necessary to protect any rights of the claimant. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1; 1973 Ed., § 16-523.)

Section references. — This section is referred to in § 28-3107.

Cited in *First Sav. Bank v. Barclays Bank*, App. D.C., 618 A.2d 134 (1992).

§ 16-524. Judgment generally; condemnation of attached property.

(a) If the defendant in the action has been served with process, final judgment may not be rendered against the garnishee until the action against the defendant is determined.

(b) If in such an action judgment is rendered for the defendant, the garnishee shall be discharged and shall recover his costs, and the property attached or its proceeds shall be restored to the garnishee or to the defendant, as the case may require.

(c) If in such an action judgment is rendered in favor of the plaintiff against the defendant, and it appears that the plaintiff is entitled to a judgment of condemnation of the property attached, the court shall proceed to enter such judgment in the attachment as is directed by sections 16-525 to 16-527. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1; 1973 Ed., § 16-524.)

Section references. — This section is referred to in §§ 16-529 and 28-3107.

Cited in *First Sav. Bank v. Barclays Bank*, App. D.C., 618 A.2d 134 (1992).

§ 16-525. Condemnation and sale of property; proceeds of sale under interlocutory order.

In any form of action, where specific property has been attached and remains under the control of the court, judgment of condemnation of the property shall be entered, and as much thereof as may be necessary to satisfy the demand of the plaintiff shall be sold under fieri-facias. If the property was sold under interlocutory order of the court, the proceeds, or as much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1; 1973 Ed., § 16-525.)

Section references. — This section is referred to in §§ 16-524, 16-527, and 28-3107.

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982).

§ 16-526. Judgment against garnishee.

(a) When a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the plaintiff's claim, less a reasonable attorney's fee to be fixed by the court, and costs, and execution may be had thereon. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs, and execution may be had thereon. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1; 1973 Ed., § 16-526.)

Section references. — This section is referred to in §§ 16-524 and 28-3107.

§ 16-527. Judgment in case of undertaking for retention of property or credits.

(a) When property or credits attached are released upon an undertaking given as provided by sections 16-509 and 16-510, and judgment in the action is rendered in favor of the plaintiff, it is a joint judgment against both the defendant and all persons in the undertaking for the appraised value of the property or the amount of the credits.

(b) When the property attached has been delivered to or retained by a garnishee, upon his executing an undertaking as provided by section 16-509, judgment of condemnation of the property shall be rendered as provided by section 16-525, and judgment shall also be entered that the plaintiff recover from the garnishee and his surety or sureties the value of the property, not exceeding the plaintiff's claim, the judgment to be entered satisfied if the property is forthcoming and delivered to the marshal, undiminished in value, within ten days after the judgment; otherwise, execution thereon may be had against the garnishee and his surety or sureties; and if the property is so delivered to the marshal the same shall be sold by him under fieri facias to satisfy the judgment of condemnation. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1; 1973 Ed., § 16-527.)

Section references. — This section is referred to in §§ 16-524 and 28-3107.

§ 16-528. Judgment protects garnishee.

A judgment of condemnation against a garnishee, and execution thereon, or payment by the garnishee in obedience to the judgment or an order of the court, is a sufficient defense to any action brought against him by the defendant in the action in which the attachment is issued, for or concerning the property or credits so condemned. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1; 1973 Ed., § 16-528.)

Section references. — This section is referred to in § 28-3107.

§ 16-529. Attachment in actions for fraudulent conveyances.

(a) Where the ground upon which an attachment is applied for is that the defendant has assigned, conveyed, or disposed of his property with intent to hinder, delay, or defraud his creditors, the attachment may be levied upon the property alleged to be so assigned or conveyed in the hands of the alleged fraudulent assignee or transferee, as a garnishee.

(b) The garnishee may have the same benefit of section 16-506 as the defendant in the action. If the court is of the opinion, upon the hearing of the affidavits filed, that the attachment ought not to have issued or to have been

levied on the property claimed by the garnishee, the attachment may be quashed as to the garnishee and the levy set aside.

(c) If the levy is not set aside, the garnishee may answer that he was a bona fide purchaser from the defendant for value without notice of any fraud on the part of the defendant, and the answer shall be held to make an issue, without any further pleading in reply thereto; and issue may be tried as directed by section 16-520.

(d) When the issue is found in favor of the garnishee, judgment shall be rendered in his favor for his costs and a reasonable attorney fee. When the issue is found against the garnishee, but judgment in the action is rendered in favor of the defendant, the attachment shall be dissolved, and garnishee shall recover his costs.

(e) When the issue is found against the garnishee and judgment in the action is rendered in favor of the plaintiff against the defendant, or the defendant, not being found, has failed to appear in obedience to the order of publication against him, and when it appears upon the verdict of a jury that the claim of the plaintiff against the defendant is well founded, a judgment of condemnation of the property attached shall be rendered, as directed by section 16-524(c). (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1; 1973 Ed., § 16-529.)

Cross references. — As to fraudulent conveyances, see Chapter 31 of Title 28.

Section references. — This section is referred to in § 28-3107.

§ 16-530. Time for trial of issues.

All issues raised by answers to the attachment, in any case, may be tried at the same time as the issues raised by the pleadings in the action, or separately, as may be just. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1; 1973 Ed., § 16-530.)

Section references. — This section is referred to in § 28-3107.

§ 16-531. Attachment dockets; index of attachments.

The clerk of the court shall keep an attachment docket, in which, as well as in the regular docket, shall be entered all attachments levied upon real estate, with a description, in brief, of the real estate so levied upon. The attachments shall be indexed in the names of the defendant and of any person in whose possession the estate may have been levied upon. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1; 1973 Ed., § 16-531.)

Section references. — This section is referred to in § 28-3107.

§ 16-532. Other remedies of judgment creditor.

Nothing herein contained deprives a judgment creditor of the right to file a civil action to enforce his judgment against an equitable interest in real or

personal estate of the judgment defendant, or to have a conveyance of the real or personal estate by the defendant, made with intent to hinder, delay, and defraud his creditors, set aside. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; 1973 Ed., § 16-532.)

Section references. — This section is referred to in § 28-3107.

§ 16-533. Attachment proceedings in Superior Court.

The provisions of this Code relating to attachments apply to attachment proceedings in the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(3)(A); 1973 Ed., § 16-533.)

Section references. — This section is referred to in § 28-3107.

Cited in First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

Subchapter II. Attachment and Garnishment After Judgment in Aid of Execution.

§ 16-541. Definition and applicability.

As used in this subchapter, “judgment” includes an unconditional decree for the payment of money, and this subchapter is applicable to such a decree. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; 1973 Ed., § 16-541.)

Section references. — This section is referred to in § 28-3107.

Cited in Kelly Adjustment Co. v. Boyd, App. D.C., 342 A.2d 351 (1975); United States v.

Thornton, 672 F.2d 101 (D.C. Cir. 1982); Jasper v. Carter, App. D.C., 451 A.2d 46 (1982); Martens v. Hadley Mem. Hosp., 729 F. Supp. 1391 (D.D.C. 1990).

§ 16-542. Issuance of attachment after judgment; costs.

An attachment may be issued upon a judgment either before or after or at the same time with a fieri facias. If costs are unnecessarily multiplied thereby they shall be charged to the party causing the attachment to be issued. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; 1973 Ed., § 16-542.)

Cross references. — As to attachment and garnishment before judgment, see § 16-501 et seq.

As to right of judgment creditor to file civil action to enforce his judgment against equitable interest in property, see § 16-532.

Section references. — This section is referred to in § 28-3107.

Service of writ of attachment on corporation’s registered agent. — The service of a writ of attachment on a corporation’s registered agent constitutes valid service of the writ on the corporation. Wrecking Corp. of Am. v. Jersey Welding Supply, Inc., App. D.C., 463 A.2d 678 (1983).

Priority of judgment creditor over subsequently appointed receiver. — A judgment creditor’s claim to property to satisfy a debt will have priority over a subsequently appointed receiver’s claim to that property if a court already has assumed jurisdiction over the property for the creditor’s benefit by authorizing, for example, an attachment or garnishment. Consumers United Ins. Co. v. Smith, App. D.C., 644 A.2d 1328 (1994).

The act of creating a judgment lien is the critical act for determining whether a judgment lien creditor has priority over the claim of a debtor’s receiver. If the creditor has obtained a judgment lien before a receiver is appointed for

the debtor, the lien creditor will prevail. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

Lien valid as of date writ served. — Although steps in addition to serving a writ of attachment may be required to obtain the property of a debtor held by a garnishee, the judg-

ment creditor has a valid lien as of the date the writ is served on the garnishee. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982).

§ 16-543. Revival of judgment unnecessary.

Attachment may be issued at any time during the life of the judgment, without issuing an order reviving the judgment previously thereto. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; 1973 Ed., § 16-543.)

Section references. — This section is referred to in § 28-3107.

Purpose of writ of attachment. — The purpose of a writ of attachment is to secure the debt or anticipated debt. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Child support. — A writ ordering child support payments is not a “writ of execution,” governed by §§ 15-302 and 15-305, but a writ of attachment, governed by this section. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Each periodic payment for child sup-

port becomes a separate money judgment as of the date of its accrual to which this section applies. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

The life of each child support judgment is the 12-year period specified in § 15-101, irrespective of whether the judgments are or are not recorded. *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979).

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982); *Tyler v. Central Charge Serv., Inc.*, App. D.C., 444 A.2d 965 (1982).

§ 16-544. Property subject to attachment.

An attachment may be levied upon the judgment debtor’s goods, chattels, and credits. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; 1973 Ed., § 16-544.)

Section references. — This section is referred to in § 28-3107.

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982).

§ 16-545. Multiple attachments against same judgment debtor.

Only one attachment upon goods, chattels, and credits of a judgment debtor may be satisfied at one time. Where more than one such attachment issued against the same judgment debtor is served on a garnishee the attachments shall be satisfied in the order in which they were served upon the garnishee. This section does not apply with respect to an attachment upon wages to which subchapter III of this chapter applies. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; 1973 Ed., § 16-545.)

Section references. — This section is referred to in § 28-3107.

§ 16-546. Attachments of credits.

An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and

of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; 1973 Ed., § 16-546.)

Section references. — This section is referred to in §§ 16-548 and 28-3107.

Contingent contract rights. — Contract rights which are to become due only upon the passage of time or upon the happening of a condition are not subject to garnishment. *Shpritz v. District of Columbia*, App. D.C., 393 A.2d 68 (1978).

Debts of uncertain amounts. — If the amount of a debt sought to be garnished becomes fixed only upon acceptance of performance satisfactory to the obligee or upon the exercise of judgment, discretion or opinion as distinguished from mere calculation or computation, then the amount of the debt is not sufficiently certain to permit garnishment. *Shpritz v. District of Columbia*, App. D.C., 393 A.2d 68 (1978).

Service of writ. — Service of a writ of attachment on a corporation's registered agent

constitutes valid service of the writ on the corporation. *Wrecking Corp. of Am. v. Jersey Welding Supply, Inc.*, App. D.C., 463 A.2d 678 (1983).

Attachment levied by service. — Where writ of attachment was issued the day before the settlement in a personal injury action, the garnishment was effective under this section since an attachment is levied by serving. *Monarch Life Ins. Co. v. Elam*, 918 F.2d 201 (D.C. Cir. 1990).

Although steps in addition to serving a writ of attachment may be required to obtain the property of a debtor held by a garnishee, the judgment creditor has a valid lien as of the date the writ is served on the garnishee. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982).

§ 16-547. Retention of property or credits by garnishee.

Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period the garnishee shall incur no liability whatsoever for the retention. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; 1973 Ed., § 16-547.)

Section references. — This section is referred to in § 28-3107.

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982).

§ 16-548. Attachment of judgments and money or property in hands of marshal.

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that prescribed by section 16-546 upon the debtor owing the debts.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1; 1973 Ed., § 16-548.)

Section references. — This section is referred to in § 28-3107.

§ 16-549. Attachment of money or property in hands of executor or administrator.

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Superior Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(2); 1973 Ed., § 16-549.)

Section references. — This section is referred to in § 28-3107.

§ 16-550. Preservation of property; sale.

The court may make all orders necessary for the preservation of the property attached. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1; 1973 Ed., § 16-550.)

Section references. — This section is referred to in § 28-3107.

§ 16-551. Defending against the attachment; trial of issues.

A garnishee or stranger to the action who may make claim to the property attached may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact thereby made may be tried with a jury if any party so desires. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1; 1973 Ed., § 16-551.)

Section references. — This section is referred to in §§ 16-553 and 28-3107.

Proper party. — Because a judgment debtor who cannot assert an interest in the subject property is not a proper party at a postjudgment attachment proceeding under this section and § 16-554, there was no issue

properly before the court on which it could hold a hearing. *Visions Found., Inc. v. Falcon Color, Inc.*, App. D.C., 606 A.2d 1027 (1992).

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982); *Phillips v. Sugrue*, 886 F. Supp. 63 (D.D.C. 1995).

§ 16-552. Interrogatories to garnishee; oral examination.

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served upon any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to

the defendant at the time of the service of the attachment or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers, verified by a written declaration that the answers are made under the penalties of perjury, to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

(c) Whoever willfully makes and subscribes a return, statement, or other document, pursuant to this section, that contains, or is verified by, a written declaration that it is made under the penalties of perjury, and that he does not believe to be true and correct as to every material matter, is subject to the penalties prescribed for perjury. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1; 1973 Ed., § 16-552.)

Section references. — This section is referred to in § 28-3107.

Scope of writ of garnishment. — A writ of garnishment covers only the property of the debtor in the hands of the garnishee at the time the writ is served. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

Filing of answers to interrogatories. — The garnishee must file an answer to the interrogatories in the writ and send a copy of the answer to the defendant and the judgment creditor. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

Failure to answer interrogatories not fatal unless money owed creditor. — Where the garnishee-employer fails to answer the interrogatories propounded pursuant to this section, but where testimony is later received from

the garnishee that the judgment debtor was owed nothing when the writs were received and that he thereafter left the job, and if it can be shown that no additional wages became due between receipt of the writs and termination of the employment, then § 16-573(a)(1) and (2) do not apply, the judgment creditor is owed no money and, assuming an answer is later allowed to be filed, judgment should not be entered against the garnishee under § 16-556(b). *Metropolitan Roofing & Sheet Metal Co. v. Franklin Inv. Co.*, App. D.C., 256 A.2d 913 (1969).

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982); *Wrecking Corp. of Am. v. Jersey Welding Supply, Inc.*, App. D.C., 463 A.2d 678 (1983).

§ 16-553. Traverse of garnishee's answers; trial of issue; costs and attorney's fee.

If a garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's judgment, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16-551. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1; 1973 Ed., § 16-553.)

Section references. — This section is referred to in § 28-3107.

Cited in *United States v. Thornton*, 672 F.2d

101 (D.C. Cir. 1982); *Phillips v. Sugrue*, 886 F. Supp. 63 (D.D.C. 1995).

§ 16-554. Claims to attached property.

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same. The court, without other pleadings, shall try the issues raised by the claim, with a jury if either party so requests, and may make all orders necessary to protect any rights of the claimant. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1; 1973 Ed., § 16-554.)

Section references. — This section is referred to in § 28-3107.

Proper party. — Because a judgment debtor who cannot assert an interest in the subject property is not a proper party at a postjudgment attachment proceeding under this section and § 16-551, there was no issue properly before the court on which it could hold a hearing. *Visions Found., Inc. v. Falcon Color, Inc.*, App. D.C., 606 A.2d 1027 (1992).

Asserting claims of others. — Where a personal injury plaintiff had executed a series

of assignment and authorization agreements, for the benefit of medical care providers, authorizing her attorney to pay from the proceeds of any recovery amounts equaling the providers' charges for services in connection with her injury, the plaintiff could not assert the providers' interests in her property as a defense against the garnishment of settlement proceeds by a judgment creditor. *Monarch Life Ins. Co. v. Elam*, 918 F.2d 201 (D.C. Cir. 1990).

§ 16-555. Condemnation and sale of property; proceeds of sale under interlocutory order.

Where the attachment has been levied upon specific property, on the return by the marshal, judgment of condemnation of the property may be entered, and as much thereof as may be necessary to satisfy the plaintiff's judgment may be sold under a fieri facias. If the property was sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1; 1973 Ed., § 16-555.)

Cross references. — As to effect and enforcement of decrees, see §§ 15-103 to 15-105, 15-301, and 16-541.

Section references. — This section is referred to in § 28-3107.

§ 16-556. Judgment against garnishee.

(a) Subject to the provisions of subchapter III of this chapter, if a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the

plaintiff's judgment and costs, and execution may be had thereon. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1; 1973 Ed., § 16-556.)

Section references. — This section is referred to in § 28-3107.

Scope of writ of garnishment. — A writ of garnishment covers only the property of the debtor in the hands of the garnishee at the time the writ is served. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

As a general rule, an attachment or garnishment can have no effect on property subsequently coming into the hands of the defendant or garnishee. *Consumers United Ins. Co. v. Smith*, App. D.C., 644 A.2d 1328 (1994).

Contingent contract rights. — Contract rights which are to become due only upon the passage of time or upon the happening of a condition are not subject to garnishment. *Shpritz v. District of Columbia*, App. D.C., 393 A.2d 68 (1978).

Debts of uncertain amounts. — If the amount of a debt sought to be garnished becomes fixed only upon acceptance of performance satisfactory to the obligee or upon the exercise of judgment, discretion or opinion as distinguished from mere calculation or computation, then the amount of the debt is not sufficiently certain to permit garnishment. *Shpritz v. District of Columbia*, App. D.C., 393 A.2d 68 (1978).

Failure to answer interrogatories not fatal unless money owed creditor. — Where the garnishee-employer fails to answer the interrogatories propounded pursuant to § 16-552, but where testimony is later received from the garnishee that the judgment debtor was owed nothing when the writs were received and that he thereafter left the job, and if it can be shown that no additional wages became due between receipt of the writs and termination of the employment, then § 16-573(a)(1) and (2) do not apply, the judgment creditor is owed no money and, assuming an answer is later allowed to be filed, judgment should not be entered against the garnishee under subsection (b) of this section. *Metropolitan Roofing & Sheet Metal Co. v. Franklin Inv. Co.*, App. D.C., 256 A.2d 913 (1969).

Failure to answer in condemnation action. — A corporate garnishee's failure to answer a writ of attachment served upon its registered agent may prove fatal if a judgment of condemnation is subsequently sought and entered against it on behalf of the judgment creditor. *Wrecking Corp. of Am. v. Jersey Welding Supply, Inc.*, App. D.C., 463 A.2d 678 (1983).

Cited in *United States v. Thornton*, 672 F.2d 101 (D.C. Cir. 1982).

Subchapter III. Attachment and Garnishment of Wages, etc.

§ 16-571. Definitions.

For purposes of this subchapter —

(1) The term "wages" means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(2) The term "disposable wages" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(3) The term "garnishment" means any legal or equitable procedure through which the wages of any individual are required to be withheld for payment of any debt. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1; Dec. 17, 1971, 85 Stat. 678, Pub. L. 92-200, § 5; 1973 Ed., § 16-571.)

Cross references. — As to attachment and garnishment of remuneration of District employees, see § 1-516.

As to exemption from attachment of wages of nonresident in certain cases, see § 15-503.

As to exemption from attachment and garnishment of wages received by prisoners in work release plans, see § 24-466.

Section references. — This section is referred to in §§ 15-503, 16-512, 16-582, and 47-457.

Cited in *Kelly Adjustment Co. v. Boyd*, App. D.C., 342 A.2d 361 (1975); *Riggs Nat'l Bank v. Simplicio*, 114 WLR 653 (Super. Ct. 1986); *Phillips v. Sugrue*, 886 F. Supp. 63 (D.D.C. 1995).

§ 16-572. Attachment of wages; percentage limitations; priority of attachments.

Notwithstanding any other provision of subchapter II of this chapter, where an attachment is levied upon wages due a judgment debtor from an employer-garnishee, the attachment shall become a lien and a continuing levy upon the gross wages due or to become due to the judgment debtor for the amount specified in the attachment to the extent of:

(1) 25 per centum of his disposable wages that week, or

(2) the amount by which his disposable wages for that week exceed thirty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) in effect at the time the wages are payable, whichever is less. In the case of wages for any pay period other than a week, the Mayor of the District of Columbia shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

The levy shall be a continuing levy until the judgment, interest, and costs thereof are fully satisfied and paid, and in no event may moneys be withheld, by the employer-garnishee from the judgment debtor, in amounts greater than those prescribed by this section. Only one attachment upon the wages of a judgment debtor may be satisfied at one time. Where more than one attachment is issued upon the wages of the same judgment debtor and served upon the same employer-garnishee, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority set forth in section 16-507. (Dec. 23, 1963, 77 Stat. 555, Pub. L. 88-241, § 1; Dec. 17, 1971, 85 Stat. 678, Pub. L. 92-200, § 6; 1973 Ed., § 16-572; Apr. 30, 1988, D.C. Law 7-104, § 4(f), 35 DCR 147.)

Cross references. — As to property subject to attachment and priority of liens thereof, see § 16-507.

Section references. — This section is referred to in §§ 16-577 and 28-3107.

Legislative history of Law 7-104. — See note to § 16-301.

Commissioned salespersons. — Commissioned salespersons are entitled to same protections in garnishment as wage or salary employees. *Riggs Nat'l Bank v. Simplicio*, 114 WLR 653 (Super. Ct. 1986).

Under paragraph (1) of this section, an employer-garnishee real estate company was re-

quired to remit to its judgment debtor commissioned salesperson 75% of each commission that became due and owing to her, and to pay the remaining 25% to the judgment creditor. *Riggs Nat'l Bank v. Simplicio*, 114 WLR 653 (Super. Ct. 1986).

Priority. — The attachment served first, regardless of whether it was served before the filing of a voluntary bankruptcy petition, is entitled to priority. *Rab v. Safeco Ins. Co. of Am.*, App. D.C., 556 A.2d 1072 (1989).

Cited in *Ausbrooks v. Ausbrooks*, App. D.C., 493 A.2d 324 (1985).

§ 16-573. Employer's duty to withhold and make payments; percentage.

(a) Except as provided in subsection (b) of this section, an employer upon whom an attachment is served, and who:

(1) at the time is indebted for wages to an employee who is the judgment debtor named in the attachment; or

(2) becomes so indebted to the judgment debtor in the future — shall, while the attachment remains a lien upon such indebtedness, withhold and pay to the judgment creditor, or his legal representative, within 15 days after the close of the last pay period of the judgment debtor ending in each calendar month, that percentage of the gross wages payable to the judgment debtor for the pay period or periods ending in such calendar month to which the judgment creditor is entitled under the terms of this section until the attachment is wholly satisfied.

(b) Upon written notice of any court proceeding attacking the attachment or the judgment on which it is based, the employer shall make no further payments to the judgment creditor or his legal representative until receipt of an order of court terminating the proceedings; except that, in the case of child support judgments, the employer shall continue to withhold the payments from the judgment debtor until receipt of an order of the court terminating the withholding.

(c) Any payments made by an employer-garnishee in conformity with this section shall be a discharge of the liability of the employer to the judgment debtor to the extent of the payment.

(d) Under this section the employer-garnishee shall not withhold or pay over more than 10 per centum of the gross wages payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$200, nor more than 20 per centum of the gross wages in excess of \$200 payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$500. (Dec. 23, 1963, 77 Stat. 555, Pub. L. 88-241, § 1; 1973 Ed., § 16-573; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(1), 33 DCR 6710.)

Section references. — This section is referred to in § 28-3107.

Legislative history of Law 6-166. — Law 6-166, the "District of Columbia Child Support Enforcement Amendment Act of 1985," was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 8, 1986, and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

Duty to withhold and make payments does not terminate with a motion to quash the garnishment. — Without statutory language terminating the duty of an employer, upon whom a writ of attachment is served, to withhold and to pay wages to a creditor, the Court, interpreting the plain language and purpose of this section, concluded that the obliga-

tion to withhold wages persists despite a motion to quash the garnishment. *First Va. Bank v. Randolph*, 920 F. Supp. 213 (D.D.C. 1996).

Failure to answer interrogatories not fatal unless money owed creditor. — Where the garnishee-employer fails to answer the interrogatories propounded pursuant to § 16-552, but where testimony is later received from the garnishee that the judgment debtor was owed nothing when the writs were received and that he thereafter left the job, and if it can be shown that no additional wages became due between receipt of the writs and termination of the employment, then subsection (a) of this section does not apply, the judgment creditor is owed no money and, assuming an answer is later allowed to be filed, judgment should not be entered against the garnishee under § 16-556(b). *Metropolitan Roofing & Sheet Metal Co. v. Franklin Inv. Co.*, App. D.C., 256 A.2d 913 (1969).

§ 16-574. Judgment creditor to file receipts, in court, of amount collected.

(a) The judgment creditor shall:

(1) file with the clerk of the court, every three months after the serving of an attachment upon an employer-garnishee, a receipt showing the amount received and the balance due under the attachment as of the date of filing;

(2) file a final receipt with the court and furnish a copy thereof to the employee-garnishee; and

(3) obtain a vacation of the attachment within 20 days after the attachment has been satisfied.

(b) If the judgment creditor fails to file any of the receipts prescribed by subsection (a) of this section, an interested party may move the court to compel the defaulting judgment creditor to appear in court and make an accounting forthwith. The court may, in its discretion, enter judgment for any damages, including a reasonable attorney's fee suffered by, and tax costs in favor of, the party filing the motion to compel the accounting. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1; 1973 Ed., § 16-574.)

Section references. — This section is referred to in § 28-3107.

§ 16-575. Judgment against employer-garnishee for failure to pay percentages.

If the employer-garnishee fails to pay to the judgment creditor the percentages prescribed in this subchapter of the wages which become payable to the judgment debtor for any pay period, judgment shall be entered against him for an amount equal to the percentages with respect to which the failure occurs. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1; 1973 Ed., § 16-575.)

Section references. — This section is referred to in § 28-3107.

Liability for failure to withhold. — Under District of Columbia law, a private employer would be liable to a creditor for the amount it failed to withhold from a judgment debtor's wages prior to the final disposition of a motion to quash the garnishment. *First Va. Bank v. Randolph*, 920 F. Supp. 213 (D.D.C. 1996).

Continuing levy. — The statutory scheme covering attachment of wages provides for a continuing levy against a judgment debtor's wages until the judgment is satisfied or until the judgment debtor resigns or is dismissed and is not reemployed within 90 days. *Household Fin. Corp. v. Training Research & Dev., Inc.*, App. D.C., 316 A.2d 850 (1974).

Cited in *Landahl, Brown & Weed, Assocs. v. Houston*, App. D.C., 404 A.2d 934 (1979).

§ 16-576. Lapse of attachment upon resignation or dismissal of employee.

If a judgment debtor resigns or is dismissed from his employment while an attachment upon his wages is wholly or partly unsatisfied, the attachment shall lapse and no further deduction may be made thereon unless the judgment debtor is reinstated or reemployed within 90 days after the resignation or dismissal. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1; 1973 Ed., § 16-576.)

Section references. — This section is referred to in § 28-3107.

§ 16-577. Applicability of per centum limitations to judgment for support.

The per centum limitations prescribed by section 16-572 do not apply in the case of execution upon a judgment, order, or decree of any court of the District of Columbia for the payment of any sum for the support or maintenance of a person's spouse, or former spouse, or children, and any such execution, judgment, order, or decree shall, in the discretion of the court, have priority over any other execution which is subject to the provisions of this subchapter. In the case of execution upon such a judgment, order, or decree for the payment of such sum for support or maintenance, the limitation shall be 50 per centum of the gross wages due or to become due to any such person for the pay period or periods ending in any calendar month. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1; 1973 Ed., § 16-577; Oct. 1, 1976, D.C. Law 1-87, § 13, 23 DCR 2544.)

Section references. — This section is referred to in § 28-3107.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The

Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 16-578. Superior Court judgments; lapse; validity.

An attachment issued by the Superior Court of the District of Columbia upon a judgment of that court duly filed and recorded, and levied within twelve years from the date of the judgment upon the wages due or to become due to the judgment debtor from the employer-garnishee, shall not lapse or become invalid prior to complete satisfaction solely by reason of the expiration of the period of limitation set forth in section 15-101. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, §§ 145(b)(3)(A), (b)(4); 1973 Ed., § 16-578.)

Cross references. — As to quashing of writ of attachment, see § 16-506.

As to levies upon different types of property, see §§ 16-511 and 16-512.

As to unlawful advancement of salary or

earnings to avoid attachment or garnishment, see § 16-513.

Section references. — This section is referred to in § 28-3107.

§ 16-579. Payments by employer-garnishee where employee has no salary or salary inadequate for services rendered.

Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that the salary or compen-

sation is merely colorable and designed to defraud or impede the creditors of the debtor, the court may direct the employer-garnishee to make payments on account of the judgment, in installments, based upon a reasonable value of the services rendered by the judgment debtor under his employment or upon the debtor's then earning ability. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; 1973 Ed., § 16-579.)

Section references. — This section is referred to in § 28-3107.

“Reasonable value of the services rendered by the judgment debtor.” — The “reasonable value of the services rendered by the judgment debtor” may be determined by market value of the services, actual value of the services to the employer, or amount actually received by the employee. *IBF Corp. v. Alpern*, App. D.C., 487 A.2d 593 (1985).

Proof of obligation to debtor required.

— Valuable but uncompensated services rendered by a judgment debtor to a garnishee may not be subjected to garnishment without proof that the garnishee is liable to the debtor. *Phillips v. Sugrue*, 886 F. Supp. 63 (D.D.C. 1995).

§ 16-580. Quashing attachment where judgment obtained to hinder just claims.

Where an attachment levied under this subchapter is based upon a judgment obtained by default or consent without a trial upon the merits, the court, upon motion of an interested person, may quash the attachment upon satisfactory proof that the judgment was obtained without just cause and solely for the purpose of preventing or delaying the satisfaction of just claims. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; 1973 Ed., § 16-580.)

Section references. — This section is referred to in § 28-3107.

§ 16-581. Rules of procedure.

The judges of the Superior Court of the District of Columbia and of the United States District Court for the District of Columbia shall establish such rules of procedure for their respective courts as may be necessary to effectuate the purposes of this subchapter. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(5); 1973 Ed., § 16-581.)

Section references. — This section is referred to in § 28-3107.

§ 16-582. Attachments to which this subchapter is applicable.

This subchapter applies only with respect to attachments upon wages, as defined by section 16-571, issued on or after 60 days from August 4, 1959. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; 1973 Ed., § 16-582.)

Section references. — This section is referred to in § 28-3107.

Cited in *Phillips v. Sugrue*, 886 F. Supp. 63 (D.D.C. 1995).

§ 16-583. No garnishment before judgment.

(a) Except as otherwise provided in the District of Columbia Child Support Enforcement Amendment Act of 1985 or as provided in the D.C. Code, section 16-916, before entry of a judgment in an action against a debtor, the creditor may not obtain an interest in any property of the debtor by attachment, garnishment, or like proceedings.

(b) The holder who is served an order of withholding under this subchapter may deduct and retain from the obligor's earnings or other income an additional \$2.00 over the withholding amount for expenses incurred as a result of the withholding. (Dec. 17, 1971, 85 Stat. 679, Pub. L. 92-200, § 7; 1973 Ed., § 16-583; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(2), 33 DCR 6710.)

Section references. — This section is referred to in § 28-3107.

Legislative history of Law 6-166. — See note to § 16-573.

References in text. — The "District of Co-

lumbia Child Support Enforcement Amendment Act of 1985," referred to in subsection (a), is D.C. Law 6-166 which is codified principally as § 30-501 et seq.

§ 16-584. No discharge from employment for garnishment.

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment. (Dec. 17, 1971, 85 Stat. 679, Pub. L. 92-200, § 7; 1973 Ed., § 16-584.)

Section references. — This section is referred to in § 28-3107.

CHAPTER 6. BONDS AND UNDERTAKINGS.

Sec.

16-601. Undertaking in lieu of fiduciary's bond.

§ 16-601. Undertaking in lieu of fiduciary's bond.

A bond required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of creditors, or other fiduciary appointed or confirmed by the United States District Court for the District of Columbia or the Superior Court of the District of Columbia, or a bond required from a party to a cause or proceeding pending in that court, shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises; and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court directs and the court may give judgment thereon in favor of any person thereby aggrieved against the principal and sureties for the damages sustained by him, and that judgment may be rendered against all or any of the parties whose names are thereto signed.

The United States District Court for the District of Columbia (as specified in section 11-501) and the Superior Court of the District of Columbia (as specified in section 11-921) have jurisdiction to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon the undertaking, as law and justice require. This section does not deprive a party having a claim or cause of action under or upon the undertaking from electing to pursue his ordinary remedy by civil suit.

The provisions of this Code relating to actions, remedies and proceedings upon bonds of fiduciaries apply to such undertakings to the same extent as if undertaking had been expressly mentioned and referred to therein. (Aug. 30, 1964, 78 Stat. 678, Pub. L. 88-509, § 3(c)(1); July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(c); 1973 Ed., § 16-601.)

Misappropriation of trust funds constitutes default. — Where a trustee of an estate of a minor fails to transfer assets to herself in her capacity of guardian, as required by law and express order of the court, but instead has the funds withdrawn from the trust account paid to her individually or to her credit in a Totten Trust, this is a misappropriation of trust funds and constitutes prior defaults for which the trustee's surety is liable. *Schilt v. Duvall*, 479 F.2d 1228 (D.C. Cir. 1973).

Confirmation of auditor's report does not negate trustee's liability. — Where all of the defaults on the part of a trustee-guardian occur subsequent to the period governed by an auditor's report but prior to the filing of the report, the order confirming the report does not become *res judicata*, nor is the successor guardian of the estate required to seek to set aside the report in order to sue the trustee for misappropriation of funds. *Schilt v. Duvall*, 479 F.2d 1228 (D.C. Cir. 1973).

CHAPTER 7. CRIMINAL PROCEEDINGS IN THE SUPERIOR COURT.

Sec.

- 16-701. Rules and regulations.
- 16-702. Prosecution by indictment or information.
- 16-703. Process of Criminal Division; fees.
- 16-704. Bail; collateral security.
- 16-705. Jury trial; trial by court.
- 16-706. Enforcement of judgments; commitment upon non-payment of fine.
- 16-707. Disposition of fines.

Sec.

- 16-708. Penalties for wrongful conversion of forfeitures and fines.
- 16-709. Executions on forfeited recognizances and judgments.
- 16-710. Suspension of imposition or execution of sentence.
- 16-711. Restitution or reparation.
- 16-712. Community service.
- 16-713. Alien sentencing.

§ 16-701. Rules and regulations.

The Superior Court may make such rules and regulations for conducting business in the Criminal Division of the court, consistent with statutes applicable to such business and in the manner provided in section 11-946, as it may deem necessary and proper. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(d)(1); 1973 Ed., § 16-701.)

Construction and effect of rules. — The Superior Court's rules must be construed in light of the meaning of the corresponding federal rules and, therefore, as with the federal rules, the Superior Court's rules, at least when they are substantially identical to the federal rules, have the force and effect of law. *Campbell v. United States*, App. D.C., 295 A.2d 498 (1972).

Consistency with Code provisions. — A

federal rule which, by Act of Congress, becomes a Superior Court rule may not supersede an inconsistent provision of the District of Columbia Code. Once it becomes a Superior Court rule, it must behave like a Superior Court rule; that is, under this section, it must be consistent with any statute applicable to the court's business. *Flemming v. United States*, App. D.C., 546 A.2d 1001 (1988).

§ 16-702. Prosecution by indictment or information.

An offense prosecuted in the Superior Court which may be punished by death shall be prosecuted by indictment returned by a grand jury. An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, but it may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment. Any other offense may be prosecuted by indictment or by information. An information subscribed by the proper prosecuting officer may be filed without leave of court. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(d)(2)(A); 1973 Ed., § 16-702.)

Cross references. — As to procedural rule-making authority of the various District courts, see §§ 11-743, 11-946, and 11-1203.

As to prosecutions for vagrancy, see § 22-3302 et seq.

§ 16-703. Process of Criminal Division; fees.

(a) The Criminal Division of the Superior Court may issue process for the arrest of a person against whom an indictment is returned, an information is filed, or a complaint under oath is made.

(b) Process shall —

(1) be under the seal of the court;

(2) bear teste in the name of a judge of the court, and

(3) be signed by a clerk or employee of the court authorized to administer oaths.

(c) In cases arising out of violations of any of the ordinances of the District of Columbia, process shall be directed to the Chief of Police, who shall execute the process and make return thereof in like manner as in other cases.

(d) In all other criminal cases, the process issued by the Superior Court may be directed to the United States marshal or to the Chief of Police.

(e) For services pursuant to subsection (d) of this section the marshal shall receive the fees prescribed by section 15-709(b). (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 556, Pub. L. 91-358, title I, § 145(d)(3); 1973 Ed., § 16-703.)

§ 16-704. Bail; collateral security.

(a) A person charged with an offense triable in the criminal division of the Superior Court of the District of Columbia may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the court or the station keeper of the police precinct within which he is apprehended. When a sum of money is deposited as collateral security as provided by this section it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court. When forfeited, it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the United States or of the District. Every person receiving any sum of money deposited as provided by this section shall be deemed in law the agent of the person depositing it or of the United States or the District, as the case may be, for all purposes of properly preserving and accounting for money.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any forfeitures collected in the criminal division of the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(d)(6); 1973 Ed., § 16-704.)

Cross references. — As to release and pre-trial detention, see § 23-1301 et seq.

Section references. — This section is referred to in § 16-708.

Alternatives for release must promptly be made available. — Unless the alternatives

of release on citation, bond or forfeitable collateral are available promptly to arrestees detained for processing, they are detained in violation of their Fourth Amendment rights. *Lively v. Cullinane*, 451 F. Supp. 1000 (D.D.C. 1978).

§ 16-705. Jury trial; trial by court.

(a) In a criminal case tried in the Superior Court in which, according to the Constitution of the United States, the defendant is entitled to a jury trial, the trial shall be by jury, unless the defendant in open court expressly waives trial by jury and requests trial by the court, and the court and the prosecuting officer consent thereto. In the case of a trial without a jury, the trial shall be by a single judge, whose verdict shall have the same force and effect as that of a jury.

(b) In any case where the defendant is not under the Constitution of the United States entitled to a trial by jury, the trial shall be by a single judge without a jury, except that if —

(1) the case involves an offense which is punishable by a fine or penalty of more than \$1,000 or by imprisonment for more than 180 days (or for more than six months in the case of the offense of contempt of court), and

(2) the defendant demands a trial by jury and does not subsequently waive a trial by jury in accordance with subsection (a), the trial shall be by jury.

(c) The jury shall consist of twelve persons, unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve. Even absent such agreement, if, due to extraordinary circumstances, the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court, a valid verdict may be returned by the remaining eleven jurors. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 556, Pub. L. 91-358, title I, § 145(d)(4); 1973 Ed., § 16-705; May 15, 1993, D.C. Law 9-272, § 202, 40 DCR 796; Mar. 21, 1995, D.C. Law 10-232, § 2, 42 DCR 18; May 16, 1995, D.C. Law 10-255, § 14(a), 41 DCR 5193.)

- I. General Consideration.
- II. Constitutional Right to Jury.
- III. Seriousness of Offense.
 - A. In general.
 - B. Jury Offenses.
 - C. Nonjury Offenses.
- IV. Number of jurors.
- V. Waiver.

I. GENERAL CONSIDERATION.

Effect of amendments. — D.C. Law 10-232 added the last sentence in (c).

D.C. Law 10-255 validated a previously made change in (b)(1).

Legislative history of Law 9-272. — Law 9-272, the “Criminal and Juvenile Justice Reform Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-401 and transmitted to both Houses of Congress for

its review. D.C. Law 9-272 became effective on May 15, 1993.

Legislative history of Law 10-232. — Law 10-232, the “Jury Trial Act of 1994,” was introduced in Council and assigned Bill No. 10-603, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-374 and transmitted to both Houses of Congress for its review. D.C. Law 10-232 became effective on March 21, 1995.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

When jury trial may be demanded. — Under subsection (a), a crime is jury-demandable if the United States Constitution requires it; under subsection (b), whether a crime is jury-demandable depends upon whether the maximum penalty meets the statutory threshold. *Day v. United States*, App. D.C., 682 A.2d 1125 (1996).

Sentencing hearing. — Defendant, who was convicted of assault with a dangerous weapon, has no constitutional right to a jury trial on the issue of restitution at the sentencing hearing. *United States v. Braider*, 112 WLR 1441 (Super. Ct. 1984).

Cited in *In re Kane*, App. D.C., 422 A.2d 995 (1980); *Ford v. United States*, App. D.C., 533 A.2d 617 (1987); *Flemming v. United States*, App. D.C., 546 A.2d 1001 (1988); *Browner v. District of Columbia*, App. D.C., 549 A.2d 1107 (1988); *Simmons v. United States*, App. D.C., 554 A.2d 1167 (1989); *Stevenson v. District of Columbia*, App. D.C., 562 A.2d 622 (1989); *United States v. Dixon*, 117 WLR 9 (Super. Ct. 1989); *District of Columbia ex rel. K.K. v. W.C.R.*, 117 WLR 1373 (Super. Ct. 1989); *Powers v. United States*, App. D.C., 588 A.2d 1166 (1991); *Speight v. United States*, App. D.C., 599 A.2d 794 (1991).

II. CONSTITUTIONAL RIGHT TO JURY.

Common law offenses. — If an offense is of a nature indictable at common law and thus tried by a jury, that offense is triable by a jury under the Constitution. *Gaithor v. United States*, App. D.C., 251 A.2d 644 (1969).

It is not necessary that a statute establishing a former common law offense which was jury-triable as a statutory offense which is not jury-triable expressly eliminate the common law right to jury trial. *Day v. United States*, App. D.C., 682 A.2d 1125 (1996).

Remedy for deprivation of right to jury. — Where the defendant is fined in excess of the statutory threshold in subsection (b) for a contempt without the benefit of a jury trial, the deprivation of defendant's Sixth Amendment right to a jury trial is remedied by reducing his fine to the threshold amount. *In re Evans*, App. D.C., 411 A.2d 984 (1980).

III. SERIOUSNESS OF OFFENSE.

A. In general.

Length of imprisonment. — Whether the right to jury trial is asserted under the United

States Constitution or under a statute, the relevant inquiry is whether the legislature has determined that the offense is serious by imposing a maximum penalty of more than six months or more than 180 days. *Day v. United States*, App. D.C., 682 A.2d 1125 (1996).

Federal statutes cannot be utilized in determining right to jury trial. — The Council is the authoritative legislative voice for the District of Columbia for the purposes of representing its citizens' opinions on the "seriousness" of charged offenses for the purposes of determining the right to a jury trial. Accordingly, the additional statutory penalties to which the D.C. Superior Court must look in such an inquiry are only those enacted into law by the Council; federal statutes cannot be utilized as a measurement of the Council's legislative will in determining a defendant's right to a jury trial. *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995).

Streamlined offenses. — The District of Columbia City Council has the legislative authority to classify the severity of crimes within the District. Defendants charged with any of the 40 streamlined offenses under the Omnibus Criminal Justice Reform Amendment Act are, therefore, not entitled to a jury trial. *United States v. Moriba*, 123 WLR 1201 (Super. Ct. 1995).

Absent any legislation to the contrary on the part of the City Council, the government's right to try a defendant without a jury in the streamlined offenses is proper in the District of Columbia. The D.C. City Council has enacted legislation, the Omnibus Criminal Justice Reform Amendment Act, which, by its very terms, limits a defendant's right to demand a jury trial in streamlined petty offenses. *United States v. Moriba*, 123 WLR 1201 (Super. Ct. 1995).

Actual penalty not in excess of statutory threshold. — Where actual penalty imposed was a fine that did not exceed the statutory threshold, there was no violation of defendant's statutory right to trial by jury. *Brookens v. Committee on Unauthorized Practice of Law*, App. D.C., 538 A.2d 1120 (1988).

Attempted offenses. — Right to a jury trial for an attempted offense is determined by the maximum imprisonment which could actually be imposed for the completed offense. *United States v. Evans*, 112 WLR 1721 (Super. Ct. 1984).

"180 days." — "180 days" means literally 180 days, not "six months," which is a different, less precise — indeed longer — period of time. *Turner v. Bayly*, App. D.C., 673 A.2d 596 (1996).

No aggregation of misdemeanor penalties. — The Superior Court would not aggregate the penalties for multiple misdemeanor offenses charged in order to reach the threshold penalty required for a jury trial. *United States v. Joseph*, 122 WLR 2337 (Super. Ct. 1994).

Contempt. — Where the defendant is fined in excess of the statutory threshold in subsection (b) for a contempt of court, he is convicted of a serious offense and is entitled to a jury trial, as guaranteed by the Sixth Amendment. *In re Evans*, App. D.C., 411 A.2d 984 (1980).

In amending subsection (b) of this section, Congress intended to afford a jury trial in contempt cases only when the penalty imposed exceeds 6 months' imprisonment, and therefore criminal contemnors have no right to a jury trial under this subsection when the only penalty imposed is a fine. *In re Evans*, App. D.C., 411 A.2d 984 (1980).

Contempt proceedings in which a jury trial is required pursuant to this section are restricted to those cases resulting in imprisonment for more than six months. *Brookens v. Committee on Unauthorized Practice of Law*, App. D.C., 538 A.2d 1120 (1988).

B. Jury Offenses.

Prosecutions under threats and unlawful entry statutes. — Prosecutions under the threats and unlawful entry statutes, with their maximum penalties of six months in prison, entitled the petitioners to trial by jury under subsection (b). *Turner v. Bayly*, App. D.C., 673 A.2d 596 (1996).

C. Nonjury Offenses.

Simple assault. — Although assault was jury-triable under the common law, under § 22-504 the offense is not classified as a serious offense with a maximum penalty of more than six months or 180 days imprisonment, and neither the United States Constitution nor the statutes of the District of Columbia entitle a defendant to a jury trial for simple assault. *Day v. United States*, App. D.C., 682 A.2d 1125 (1996).

Assault or misdemeanor destruction of property. — In light of the 1993 amendment to subsection (b) of this section and the 1994 amendments to §§ 22-403 and 22-504, assault and misdemeanor destruction of property are no longer jury-demandable crimes in the District of Columbia because the Council has reduced them to "petty" offenses as that term is defined in Sixth Amendment jurisprudence; neither of the two offenses is punishable by sufficiently harsh penalties, in addition to imprisonment, to break through the presumptive six-month ceiling and to be deemed "serious." *Burgess v. United States*, App. D.C., 681 A.2d 1090 (1996).

Driving under the influence. — Unless there are special circumstances present, there is no right to a trial by jury for the charge of driving under the influence because the maximum penalties prescribed are a fine of no more than \$300 and imprisonment of no more than

90 days. The opprobrium with which the charge is viewed, the stigma attached, and the consequences of conviction do not constitute special circumstances. *District of Columbia v. Shanahan*, 113 WLR 105 (Super. Ct. 1985).

Placement of children in family homes.

— There is no entitlement to trial by jury under Chapter 10 of Title 32, relating to placement of children in family homes, as the maximum penalty prescribed is a fine or imprisonment for more than the statutory threshold, or both. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

Shoplifting. — A person convicted of shoplifting pursuant to § 22-3813(b) may be fined not more than \$300, or sentenced to not more than 90 days imprisonment; therefore, one charged with the offense of shoplifting is not entitled to a trial by jury. *Alston v. United States*, App. D.C., 509 A.2d 1129 (1986).

Solicitation. — Solicitation for an immoral or lewd purpose is a petty offense and therefore may be tried by the court. *Gaithor v. United States*, App. D.C., 251 A.2d 644 (1969).

IV. NUMBER OF JURORS.

Subsection (c) is absolute in its terms. —

Subsection (c) of this section, requiring a jury of twelve persons unless the parties otherwise agree, is absolute in its terms. *Johnson v. United States*, App. D.C., 619 A.2d 1183 (1993).

Proceeding with jury of less than twelve. — This section provides the trial court with unconditional authority, in appropriate circumstances, to proceed to verdict with eleven jurors, irrespective of whether or not a conforming change has been made in the rules of the court. *Duvall v. United States*, App. D.C., 676 A.2d 448 (1996).

Motivation for withholding consent. —

Following release of one juror because of a family emergency, principles of due process did not forbid the government from withholding its consent to a jury of less than twelve, even if it was motivated by an unwillingness to accept a jury containing a juror known to be inclined to acquit and whose mental capacity and capabilities had been openly challenged by his peers. *Johnson v. United States*, App. D.C., 619 A.2d 1183 (1993).

Motion to strike. — Subsection (c) of this section is inapplicable to the situation where, during the course of a trial, the defendant's counsel moves to strike a juror and proceed with 11 jurors. *Graham v. United States*, App. D.C., 267 A.2d 358 (1970).

V. WAIVER.

Duty of trial court in waiver inquiry. —

In waiving trial by jury, the procedure contemplated by this section is an on-the-record inquiry of the defendant himself by the trial judge

in open court. *Hicks v. United States*, App. D.C., 296 A.2d 615 (1972).

The trial court is responsible for seeing to it by inquiry of the defendant himself that he understands and knowingly and voluntarily waives his right to trial by jury and the trial judge must also assure that such waiver is contained in the record as it occurred rather than merely as a rubber-stamp entry on the back of an information. *Banks v. United States*, App. D.C., 262 A.2d 110 (1970); *Jackson v. United States*, App. D.C., 498 A.2d 185 (1985).

The public interest in obtaining both swift and certain justice for those charged with crime requires that the trial court assume responsibility for making certain that the record in all criminal trials in which the accused has a constitutional right to trial by jury contains evidence from which it may be found that the defendant knowingly and voluntarily waived such right. *Jackson v. United States*, App. D.C., 262 A.2d 106 (1970).

Oral inquiry required. — Oral inquiry of the defendant to ascertain whether he knowingly and voluntarily waives his Sixth Amendment right to trial by jury is mandated in all cases, particularly where the trial court is faced with questions of competence and mental responsibility. *Hawkins v. United States*, App. D.C., 385 A.2d 744 (1978).

Statement required from defendant for waiver. — There should be in the record a statement in open court by the defendant himself in order to provide a basis for subsequently determining, if necessary, that he knowingly and voluntarily waived his constitutional right to trial by jury. *Jackson v. United States*, App. D.C., 262 A.2d 106 (1970).

Waiver through counsel. — A waiver of jury trial need not be made and announced by the defendant personally but may be done effectively through counsel. *Thompkins v. United States*, App. D.C., 251 A.2d 636 (1969).

Waiver where defendant entitled to counsel. — Where defendant was entitled to counsel, any notion of waiver of the right to jury trial when the defendant was not represented must be rejected. *Olevsky v. District of Columbia*, App. D.C., 548 A.2d 78 (1988).

Voluntariness hearing. — Where the record of what occurred in open court is silent as to any waiver of trial by jury, there must be a determination, after hearing, whether the defendant knowingly and voluntarily waived his right to a jury trial in open court and requested a trial by the court. *Jackson v. United States*, App. D.C., 262 A.2d 106 (1970).

Where the government concedes that the defendant demanded trial by jury and the record of what occurred in open court is silent as to any waiver, a hearing must be held to determine whether the defendant knowingly and voluntarily waived his right to a jury trial

and requested a trial by the court. *Towler v. United States*, App. D.C., 271 A.2d 553 (1970).

Effective waiver. — An effective waiver of the Sixth Amendment right to trial by jury must include an oral inquiry of the defendant himself in open court, his reply indicating that he understands the nature of his right and that he chooses to waive it and a written waiver signed by the defendant. *Hawkins v. United States*, App. D.C., 385 A.2d 744 (1978); *Jackson v. United States*, App. D.C., 498 A.2d 185 (1985).

Right to a jury trial on charge of contempt of court for refusing to testify in criminal matter was voluntarily and intentionally waived when defendant, who was well aware from terms of contempt order that he was entitled to a trial by jury, failed to indicate to government or to court that he desired a jury trial and, in addition, submitted to court on record at show cause hearing. *In re Tinney*, App. D.C., 518 A.2d 1009 (1986).

Although trial court's inquiry concerning waiver was brief, it was minimally sufficient to meet the requirements of a personal knowing and voluntary waiver and a meaningful dialogue between the judge and the defendant regarding the waiver of trial by jury. *Little v. United States*, App. D.C., 665 A.2d 977 (1995).

Where there is not only an announcement by counsel in the defendant's presence of a decision to waive jury trial, but the defendant is then advised of his right to a jury trial and he expresses approval in open court of his counsel's announcement, there is no impairment of the defendant's rights requiring reversal. *Thompkins v. United States*, App. D.C., 251 A.2d 636 (1969).

A discussion in open court at a hearing prior to trial about a jury trial for the defendant and an official court entry on the information itself which reads "Jury Trial Demand Withdrawn," cures any absence from the transcript of any waiver of the right to a jury trial. *Banks v. United States*, App. D.C., 262 A.2d 110 (1970).

Where a written waiver of a jury trial signed by the defendant is part of the record and an oral waiver by his counsel, in the defendant's presence and acquiesced in by him, is also of record and the trial proceeds to conclusion without objection by the defendant and the defendant is adjudged competent to participate in and to understand the legal proceedings against him, there is a knowing and voluntary waiver of a jury trial. *Hicks v. United States*, App. D.C., 296 A.2d 615 (1972).

Ineffective waiver. — Defendant was deprived of his constitutional right to trial by jury where the trial court failed to inquire whether he wished to waive that right. *Jackson v. United States*, App. D.C., 498 A.2d 185 (1985).

A written waiver signed by the defendant coupled with an oral waiver by defense counsel

is not a sufficient waiver of the Sixth Amendment right to jury trial. *Hawkins v. United States*, App. D.C., 385 A.2d 744 (1978).

By signing a waiver and by saying the single word "yes" in response to the trial judge's inadequate inquiry, defendant did not effectively waive her right to trial by a jury of her peers. *Lopez v. United States*, App. D.C., 615 A.2d 1140 (1992).

Remedy for ineffective waiver. — Where there is nothing to show that before proceeding to trial without a jury the trial court obtained from the defendant himself and thereafter approved a waiver of his right to trial by jury, there is no alternative but to reverse the judgment of conviction. *Payne v. United States*, App. D.C., 292 A.2d 800 (1972).

Where defendant complained that the trial judge's inquiry was insufficient, but where she never specifically asserted either that she did not understand her rights or that she wanted a

jury trial, instead of reversing defendant's conviction, the case was remanded to the trial court to determine if, in fact, defendant's pre-trial waiver of her right to trial by jury was an understanding and intentional one. *Lopez v. United States*, App. D.C., 615 A.2d 1140 (1992).

Government cannot raise waiver issue initially on appeal. — The contention that the defendant failed at arraignment to effectively waive his right to a jury trial cannot be raised by the government initially on appeal. *Sparks v. United States*, App. D.C., 358 A.2d 307 (1976).

Withdrawal of government consent to nonjury trial. — The trial court abuses its discretion by allowing the government to withdraw its consent to a nonjury trial where it asks to do so solely because it has changed its mind. *Sparks v. United States*, App. D.C., 358 A.2d 307 (1976).

§ 16-706. Enforcement of judgments; commitment upon non-payment of fine.

The Superior Court may enforce any of its judgments rendered in criminal cases by fine or imprisonment, or both. Except as otherwise provided by law, and subject to the relief provided in section 3569 of title 18, United States Code, in any case where the court imposes a fine, the court may, in the event of default in the payment of the fine imposed, commit the defendant for a term not to exceed one year. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 556, Pub. L. 91-358, title I, § 145(d)(5); 1973 Ed., § 16-706.)

References in text. — Section 3569 of Title 18 of the United States Code, referred to in the second sentence, provided for the discharge of indigent prisoners, and was repealed by § 212 of Pub. L. 98-472.

Purpose of commitment. — The Superior Court is authorized to order commitment for as long as the statutorily prescribed period to enforce the payment of a court-ordered fine, provided the purpose of such alternative is to compel payment of the fine rather than impos-

ing imprisonment for a term longer than that specified for the offense. *Batres v. District of Columbia*, App. D.C., 347 A.2d 585 (1975).

Indigent defendants. — Where the record discloses that the defendant is an indigent and that the trial court is aware of his inability to pay the fine imposed, the alternative sentence should not exceed the maximum prescribed for the offense. *Batres v. District of Columbia*, App. D.C., 347 A.2d 585 (1975).

§ 16-707. Disposition of fines.

(a) All fines payable and paid under judgment of the criminal division of the Superior Court of the District of Columbia shall, upon their payment, immediately become, in contemplation of law, the property of the United States or the District of Columbia, according to the charge upon which the fine may be adjudged. Every person receiving such a fine shall be deemed in law an agent of the United States or the District, as the case may be.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any fines paid in the criminal division of the Superior Court of the District of Columbia. (Dec.

23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(d)(6); 1973 Ed., § 16-707.)

Section references. — This section is referred to in § 16-708.

§ 16-708. Penalties for wrongful conversion of forfeitures and fines.

Whoever, being an agent as contemplated and defined by section 16-704(a), or by section 16-707(a), wrongfully converts to his own use any money received by him as provided therein, is guilty of theft, and shall be punished in the manner prescribed by law for such offense. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; 1973 Ed., § 16-708; Dec. 1, 1982, D.C. Law 4-164, § 601(a), 29 DCR 3976.)

Cross references. — As to theft, see § 22-3811.

Legislative history of Law 4-164. — Law 4-164, the "District of Columbia Theft and White Collar Crimes Act of 1982," was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the

Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

§ 16-709. Executions on forfeited recognizances and judgments.

The Superior Court of the District of Columbia may issue execution on all recognizances forfeited in its criminal division, upon motion of the prosecuting officer; and all writs of fieri facias or other writs of execution on judgments issued by the criminal division shall be directed to and executed by the United States marshal. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(d)(6); 1973 Ed., § 16-709.)

§ 16-710. Suspension of imposition or execution of sentence.

(a) Except as provided in subsection (b), in criminal cases in the Superior Court of the District of Columbia, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, or impose sentence and suspend the execution of a portion thereof, for such time and upon such terms as it deems best, if it appears to the satisfaction of the court that the ends of justice and the best interest of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, or the imposition of sentence and the suspension of the execution of a portion thereof, the court may place the defendant on probation under the control and supervision of a probation officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time when he is placed thereon. He shall observe the rules prescribed for his conduct by the

court and report to the probation officer as directed. A person may not be put on probation without his consent.

(b) The period of probation referred to in subsection (a), together with any extension thereof, shall not exceed 5 years.

(c) Nothing in this section shall be deemed to supersede the provisions of section 22-104a. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(d)(6); 1973 Ed., § 16-710; Mar. 10, 1983, D.C. Law 4-202, § 3, 30 DCR 173; Aug. 2, 1983, D.C. Law 5-24, § 2, 30 DCR 3341.)

Legislative history of Law 4-202. — See note to § 16-711.

Legislative history of Law 5-24. — Law 5-24, the "Technical and Clarifying amendments Act of 1983," was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Construction of section. — The words of this section should be construed according to their ordinary sense and with the meaning commonly attributed to them. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979).

Construed with § 22-2703. — Split sentence, unaccompanied by conditions and an order of probation, was authorized under this section, but was not authorized by D.C. Code § 22-2703; § 22-2703 controls and sentence was, therefore, not authorized. *United States v. Williams*, 116 WLR 1005 (Super. Ct. 1988).

Legislative intent. — The intent of Congress was to allow the courts to suspend the whole sentence, thus granting probation which takes effect immediately. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979).

The intention of the Congress in enacting this section was to permit disposition in run-of-the-mill petty offenses without a prison sentence and without burdening the limited staff of the probation office. *Clayton v. United States*, App. D.C., 429 A.2d 1381 (1981).

Court without authority to impose sentence not authorized by statute. — A sentencing court has no authority to impose a sentence of a nature or in a manner not authorized by statute. *Clayton v. United States*, App. D.C., 429 A.2d 1381 (1981).

"For such time." — The phrase "for such time" in the 1st sentence modifies the length of time of the suspension and not the length of the time in jail to be suspended. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979).

Commencement of sentence. — The ordinary sense and meaning of this section is that commencement of service of sentence may be

held in abeyance. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979).

This section contains no reference to suspending a part of the sentence. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979).

Split sentences. — A "split sentence" is a sentence on 1 count which imposes a term of incarceration, suspends only part of it, and places the defendant on probation following his release from incarceration in lieu of the suspended balance of the prison term. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979); *Keitt v. United States*, App. D.C., 450 A.2d 461 (1982).

This section, as modified by the District of Columbia Sentencing Improvements Act of 1982 (D.C. Code §§ 16-710 through 713), §§ 24-104, 24-461, and 24-462, and the former Federal Youth Corrections Act (18 U.S.C. § 5005 et seq. (Repealed)), authorizes imposition of split sentencing of young offenders. *United States v. Brown*, 112 WLR 81 (Super. Ct. 1984).

A judge of the Superior Court has no authority to impose a split sentence. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979).

Split sentences on a 1-count case are not authorized under this section. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979).

Split sentences, which occur when the trial court imposes on 1 count a term of incarceration, suspends only part of it, and places the defendant on probation following his release from incarceration in lieu of the suspended balance in prison, are illegal because they are neither statutorily permitted nor are they within the realm of inherent judicial power. *Allen v. United States*, App. D.C., 431 A.2d 27 (1981).

Conditions on suspension of imposition or execution of sentence. — Conditions may be imposed in suspending imposition or execution of sentence which would restrict the defendants' constitutional rights but the condition must not be immoral, illegal or impossible of performance. *Huffman v. United States*, App. D.C., 259 A.2d 342 (1969), aff'd, 470 F.2d 386 (D.C. Cir. 1971), rev'd on other grounds on rehearing, 502 F.2d 419 (D.C. Cir. 1974).

Disposition by suspending imposition of sentence. — Disposition by suspending imposition of sentence is an appropriate alternative for terminating a criminal case where a defendant has either pleaded guilty or been found guilty by the court or a jury. The absence of a formal sanction does not negate the conviction. *Clayton v. United States*, App. D.C., 429 A.2d 1381 (1981).

Grant or denial and term of probation. — Under both this section and § 22-2703, the decision to grant or deny probation, as well as the term of probation ordered, is within the broad sentencing discretion of the trial court. *Simmons v. United States*, App. D.C., 461 A.2d 463 (1983).

Suspension of imposition of sentence gives right of appeal. — The suspension of imposition of sentence is a disposition terminating the case, giving the defendant a right of appeal. *In re Siracusa*, App. D.C., 458 A.2d 408 (1983).

Imposition of more severe sentence after new trial permissible. — In the absence of retaliatory motivation, the sentencing judge may impose a more severe sentence after a new trial as long as the reasons for doing so appear clear from the record. *Allen v. United States*, App. D.C., 431 A.2d 27 (1981).

Imposition of sentence must precede grant of probation. — This section permits the trial court to grant probation only after it has imposed a sentence and suspended its execution. *Schwasta v. United States*, App. D.C., 392 A.2d 1071 (1978).

The grant of probation is permissible only when the sentencing court has first imposed a sentence. *Beale v. United States*, App. D.C., 465 A.2d 796 (1983), cert. denied, 465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694 (1984), overruled on other grounds, *Winfield v. United States*, App. D.C., 676 A.2d 1 (1996).

Consent of probationer. — Where counsel or the defendant fairly manifests an apparent objection to the probation, the trial court cannot proceed to impose probation without obtaining an explicit consent on the record, to ensure compliance with the command of the statute. *Jamison v. United States*, App. D.C., 600 A.2d 65 (1991).

Federal Probation Act. — Superior Court's authority to grant probation is not restricted by the provisions of the former Federal Probation Act, 18 U.S.C. § 3651 [repealed]. *Sanker v. United States*, App. D.C., 374 A.2d 304 (1977).

This section, not the former Federal Probation

Act, is the source of authority allowing the suspending of sentences and the granting of probation by the Superior Court. *Davis v. United States*, App. D.C., 397 A.2d 951 (1979).

Judgment of trial court. — The decision to suspend the sentence of one convicted of a crime and to substitute probation for that sentence is committed by statute to the sound judgment of the trial court. *Jones v. United States*, App. D.C., 401 A.2d 473 (1979).

The decision to grant or revoke probation is a matter committed to the sound discretion of the sentencing court. *Thompson v. United States*, App. D.C., 444 A.2d 972 (1982).

Probation for solicitation conviction. — This section has been held to authorize the trial court to grant probation upon conviction of solicitation. *United States v. Williams*, 116 WLR 1005 (Super. Ct. 1988).

Conditions of probation. — Conditions of probation may be prescribed by the court to minimize the chance of recurrence of the crime committed. *Willis v. United States*, App. D.C., 250 A.2d 569 (1969).

Trial court has authority to require defendant to stay away from certain person as a condition of probation, where the defendant's relationship with that person was clearly a factor in his criminal conduct. *Willis v. United States*, App. D.C., 250 A.2d 569 (1969).

Given the broad discretion concerning imposition of probation conferred upon the sentencing court and the contents of the presentence report in the case, it was not unlawful for the trial court to require the defendant to submit to a psychiatric examination as a condition of probation. *Moore v. United States*, App. D.C., 387 A.2d 714 (1978).

Cited in *Clemons v. United States*, App. D.C., 400 A.2d 1048 (1979); *Clark v. United States*, App. D.C., 416 A.2d 717, cert. denied, 449 U.S. 922, 101 S. Ct. 323, 66 L. Ed. 2d 151 (1980); *Carradine v. United States*, App. D.C., 420 A.2d 1385 (1980); *United States v. Garnett*, 653 F.2d 558 (D.C. Cir. 1981); *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982); *Davidson v. United States*, App. D.C., 467 A.2d 1282 (1983); *Jones v. United States*, App. D.C., 560 A.2d 513 (1989); *United States v. A. B.*, 117 WLR 785 (Super. Ct. 1989); *Simon v. United States*, App. D.C., 570 A.2d 305 (1990); *Brown v. United States*, App. D.C., 579 A.2d 1158 (1990); *Houston v. United States*, App. D.C., 592 A.2d 1066 (1991); *Bratcher v. United States*, App. D.C., 604 A.2d 858 (1992).

§ 16-711. Restitution or reparation.

(a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself,

require a person convicted of any offense to make reasonable restitution or reparation.

(b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant's ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant's ability to make restitution or reparation.

(c) The court shall fix the manner of performing restitution or reparation.

(d) At any time during the probation period or period of restitution or reparation, the defendant may request and the court may grant a hearing on any matter related to the plan of restitution or reparation. (Mar. 10, 1983, D.C. Law 4-202, § 2, 30 DCR 173.)

Legislative history of Law 4-202. — Law 4-202, the "District of Columbia Sentencing Improvements Act of 1982," was introduced in Council and assigned Bill No. 4-120, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-286 and transmitted to both Houses of Congress for its review.

Purpose of section. — The stated purpose in adopting this section was to promote the use of restitution and community service as sentencing options. The legislative history of this section indicates that it was not designed to serve as an additional civil remedy for victims of crime, but as a tool for use in sentencing. *Sloan v. United States*, App. D.C., 527 A.2d 1277 (1987).

No right to jury or to evidentiary hearing. — Defendant, who was convicted of assault with a dangerous weapon, has no right to a jury trial or to an evidentiary hearing on the issue of restitution at the sentencing hearing. *United States v. Braider*, 112 WLR 1441 (Super. Ct. 1984).

Given that the restitution option under this section was not meant as the equivalent of a civil action but as a sentencing device, no right to a jury trial on the calculation of the award was envisioned. The award is merely a part of the sentencing proceeding. Therefore, so long as the appropriate due process protections normally required in a sentencing proceeding are afforded, the entire panoply of procedures required in a civil tort action are not necessary. *Sloan v. United States*, App. D.C., 527 A.2d 1277 (1987).

Contempt. — Judges of the trial court retain the authority under this section to impose restitution as a separate sentence which would then be enforceable through the court's contempt power. *Jones v. United States*, App. D.C., 560 A.2d 513 (1989).

"Actual damage" construed. — The term "actual damage" in subsection (b) includes known liquidated damages such as medical expenses, lost wages, and other expenses connected with the crime; it does not include those damages which are not presently and readily measurable, however, since these can be accurately determined only in a civil proceeding. *Sloan v. United States*, App. D.C., 527 A.2d 1277 (1987).

Damages may not include pain and suffering. — The trial court is free to include in its award lost wages and medical expenses, already accrued or reasonably anticipated, but is not free to include undetermined damages, such as pain, disfigurement, suffering, and anguish resulting from defendant's attack. These damages are generally not properly part of a criminal proceeding, but are left to a more exacting determination in a civil proceeding, where the primary purpose is compensation of the victim. *Sloan v. United States*, App. D.C., 527 A.2d 1277 (1987).

Damages may include pain and suffering. — Restitution need not include only liquidated or easily measurable damages but may also include compensation for pain and suffering and other nonliquidated losses. *United States v. Braider*, 112 WLR 1441 (Super. Ct. 1984). (But see *Sloan v. United States*, App. D.C., 527 A.2d 1277 (1987)).

Findings of fact required. — While the trial court has wide discretion in sentencing, including its order of restitution, the trial court must make findings of fact elucidating the basis for its monetary assessment so that the Court of Appeals can review its decision-making process on appeal. *Sloan v. United States*, App. D.C., 527 A.2d 1277 (1987).

Participation by victim not improper. — Participation by the victim in restitution proceedings is not improper where court provides defendant with a trial-type proceeding. *United States v. Braider*, 112 WLR 1441 (Super. Ct. 1984).

Restitution as alternative to incarceration. — Where a defendant consents to compensation to victims of crimes for which he was indicted but not convicted, and consents to the specific terms of the restitution plan, the trial court does not exceed its statutory authority in offering such a restitution plan as an alternative to incarceration. *Hill v. United States*, App. D.C., 529 A.2d 788 (1987).

End of probation does not terminate restitution. — Since the court may impose restitution as an independent sentence apart from probation, the expiration of the term of probation will not end defendant's obligation to pay restitution. *United States v. Braider*, 112 WLR 1441 (Super. Ct. 1984).

Double jeopardy violation. — Where the sentencing judge ordered restitution as a condition of defendant's probation in one case, and subsequently another judge ordered the same restitution to the same victim as a condition of defendant's probation in a later case, even though that victim had nothing to do with the later case, the action of the second judge violated double jeopardy principles. *Hardy v. United States*, App. D.C., 578 A.2d 178 (1990).

Cited in *Holland v. United States*, App. D.C., 584 A.2d 13 (1990); *In re Robertson*, App. D.C., 612 A.2d 1236 (1992).

§ 16-712. Community service.

(a) In criminal cases in the Superior Court of the District of Columbia, the court may, in addition to any other sentence imposed, require a person convicted of any offense as a condition of probation or as a sentence itself, to undertake reasonable services to the community for a period not to exceed 5 years in duration.

(b) When community service is ordered, the court shall take into consideration the physical and mental health of the defendant, his or her age, education, employment and vocational training, family circumstances, financial condition, and any other factors as shall be appropriate.

(c) The court shall fix the manner of performing community service.

(d) At any time during the probation period or period of community service, the defendant may request and the court may grant a hearing on any matter related to the plan of community service. (Mar. 10, 1983, D.C. Law 4-202, § 2, 30 DCR 173.)

Legislative history of Law 4-202. — See note to § 16-711.

Cited in *United States v. Williams*, 116 WLR 1005 (Super. Ct. 1988).

§ 16-713. Alien sentencing.

(a) Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime, the court shall administer the following advisement on the record to the defendant:

“If you are not a citizen of the United States, you are advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

(b) Upon request, the court shall allow the defendant a reasonable amount of additional time to consider the appropriateness of the plea in light of the advisement. If the court fails to advise the defendant as required by subsection (a) and the defendant shows that conviction of the offense to which the defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from the United States, or denial of naturalization pursuant to the laws of the United States, the court, on

defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. Absent a record that the court provided the advisement required by subsection (a), the defendant shall be presumed not to have received the required advisement. (Mar. 10, 1983, D.C. Law 4-202, § 2, 30 DCR 173.)

Legislative history of Law 4-202. — See note to § 16-711. entered before its enactment. *Alpizar v. United States*, App. D.C., 595 A.2d 991 (1991).

Retroactive application. — This section has no retroactive application to guilty pleas

CHAPTER 9. DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

Sec.

- 16-901. Definitions.
- 16-902. Residence requirements.
- 16-903. Decree annulling marriage.
- 16-904. Grounds for divorce, legal separation, and annulment.
- 16-905. Revocation and enlargement of decree of legal separation.
- 16-906. Causes for absolute divorce arising after decree for separation.
- 16-907. Parent and child relationship defined.
- 16-908. Relationship not dependent on marriage.
- 16-909. Proof of child's relationship to mother and father.
- 16-909.1. Establishment of paternity by voluntary acknowledgment and based on genetic test results.
- 16-909.2. Full faith and credit to paternity determinations by other states.
- 16-910. Dissolution of property rights; jurisdiction of court.
- 16-911. Alimony pendente lite; suit money; enforcement; custody of children.
- 16-912. Permanent alimony; enforcement; retention of dower.
- 16-913. Alimony when divorce is granted.
- 16-914. Retention of jurisdiction as to alimony and custody of children.

Sec.

- 16-915. Change of name on divorce.
- 16-916. Maintenance of spouse and minor children; maintenance of former spouse; maintenance of minor children; enforcement.
- 16-916.1. Child Support Guideline.
- 16-916.2. Child Support Guideline Commission.
- 16-916.3. Proceedings in which child support matters may be considered.
- 16-917. Co-respondents as defendants; service of process.
- 16-918. Appointment of counsel; compensation; termination of appointment.
- 16-919. Proof required on default or admission of defendant.
- 16-920. Effective date of decree for annulment or absolute divorce.
- 16-921. Validity of marriage, action to determine.
- 16-922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902.
- 16-923. Abolition of action for breach of promise, alienation of affections, and criminal conversation.
- 16-924. Expedited judicial hearing.

§ 16-901. Definitions.

For the purposes of this chapter, the term:

- (1) "Court" means the Superior Court of the District of Columbia.
- (2) "IV-D agency" means a District of Columbia agency responsible for the establishment and enforcement of a child support order and the establishment of paternity for both Aid to Families with Dependent Children ("AFDC") and non-AFDC recipients pursuant to Title IV, Part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. 651 *et seq.*).
- (3) "IV-D case" means a case brought by the IV-D agency for the establishment of paternity or the establishment or enforcement of a child support obligation. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(e)(1); 1973 Ed., § 16-901; June 18, 1991, D.C. Law 9-5, § 2(b), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 2(b), 38 DCR 4970.)

Cross references. — As to exclusive jurisdiction of Family Division of Superior Court, see § 11-1101.

Legislative history of Law 9-5. — See note to § 16-909.1.

Legislative history of Law 9-39. — See note to § 16-909.1.

Cited in *Gredone v. Gredone*, App. D.C., 361 A.2d 176 (1976); *Brice v. Brice*, App. D.C., 411 A.2d 340 (1980); *de la Croix de Lafayette v. de la Croix de Lafayette*, 117 WLR 2133 (Super. Ct. 1989).

§ 16-902. Residence requirements.

No action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least six months next preceding the commencement of the action. No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action. The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether such action shall be maintainable. If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of six months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 1; 1973 Ed., § 16-902; Apr. 7, 1977, D.C. Law 1-107, title I, § 101, 23 DCR 8737.)

Legislative history of Law 1-107. — Law 1-107, the “District of Columbia Marriage and Divorce Act,” was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976, and September 15, 1976, and second readings on November 22, 1976 and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

Jurisdiction. — Plaintiff may maintain an action for divorce even though Superior Court

has no personal jurisdiction over the defendant where the plaintiff is entitled to bring such an action by being a District of Columbia resident for at least six months before filing his complaint. *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

Cited in *Williams v. Williams*, App. D.C., 378 A.2d 668 (1977); *Moore v. Moore*, App. D.C., 398 A.2d 32, cert. denied, 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49 (1979); *Anderson v. Anderson*, 114 WLR 545 (Super. Ct. 1986); *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990); *Rollins v. Rollins*, App. D.C., 602 A.2d 1121 (1992).

§ 16-903. Decree annulling marriage.

A decree annulling the marriage as illegal and void may be rendered on any of the grounds specified by sections 30-101 and 30-103 as invalidating a marriage. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1; 1973 Ed., § 16-903.)

Cross references. — As to legitimacy of parent-child relationship, see §§ 16-907 to 16-910.

As to alimony pendente lite, see § 16-911.

As to grounds for declaring marriage null and void, see § 30-102.

§ 16-904. Grounds for divorce, legal separation, and annulment.

(a) A divorce from the bonds of marriage may be granted if:

(1) both parties to the marriage have mutually and voluntarily lived separate and apart without cohabitation for a period of six months next preceding the commencement of the action;

(2) both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action.

(b) A legal separation from bed and board may be granted if:

(1) both parties to the marriage have mutually and voluntarily lived separate and apart without cohabitation;

(2) both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action;

(3) either party has committed adultery; or

(4) either party has engaged in conduct which constitutes cruelty toward the other.

(c) For purposes of subsections (1) and (2) of paragraphs (a) and (b) of this section, parties who have pursued separate lives, sharing neither bed nor board, shall be deemed to have lived separate and apart from one another even though:

(1) they reside under the same roof; or

(2) the separation is pursuant to an order of a court.

(d) Marriage contracts may be annulled in the following cases:

(1) where such marriage was contracted while either of the parties thereto had a former wife or husband living, unless the former marriage had been lawfully dissolved;

(2) where such marriage was contracted during the insanity of either party (unless there has been voluntary cohabitation after the discovery of the insanity);

(3) where such marriage was procured by fraud or coercion;

(4) where either party was matrimonially incapacitated at the time of marriage without the knowledge of the other and has continued to be so incapacitated; or

(5) where either of the parties had not attained the age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after attaining the age of legal consent), but in such cases only at the suit of the party who had not attained such age. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 2; 1973 Ed., § 16-904; Apr. 7, 1977, D.C. Law 1-107, title I, § 102, 23 DCR 8737.)

I. General Consideration.

II. Voluntary Separation.

III. Desertion.

IV. Adultery.

V. Cruelty.

VI. Separation Agreements.

I. GENERAL CONSIDERATION.

Cross references. — As to service of process by publication on nonresident and absent defendants, see § 13-336.

As to co-respondents where adultery charged in divorce case, see § 16-917.

As to age of majority in District, see note following § 21-101.

Legislative history of Law 1-107. — See note to § 16-902.

Authority of courts to impose additional grounds. — Since Congress has prescribed certain statutory grounds for divorce, it is be-

yond the authority of any court to impose additional grounds thereto. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Maturation of grounds. — A divorce may be granted for grounds created by this section maturing both before and after the section's effective date. *Moore v. Moore*, App. D.C., 398 A.2d 32, cert. denied, 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49 (1979).

Presumption of condonation. — Presumption of condonation arises from a resumption of marital relations which, absent a satisfactory showing that no true forgiveness existed or that apparent resumption of ordinary marital relations was illusory, cancels out the earlier offense. *Mazique v. Mazique*, 356 F.2d 801 (D.C. Cir.), cert. denied, 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691 (1966).

Intention to resume marriage. — One who entertains serious intention to resume marriage must communicate that intention to the other spouse, even at the risk of his or her refusal. *Seabrook v. Seabrook*, App. D.C., 264 A.2d 311 (1970).

Spouse cannot excuse lack of reconciliation activities on basis of rumors that meretricious relationship existed between her husband and another woman. *Seabrook v. Seabrook*, App. D.C., 264 A.2d 311 (1970).

Revocation of will. — The presumption of revocation of a will in favor of a former spouse that arises with divorce and property settlement is conclusive. *Richards v. Liles*, App. D.C., 435 A.2d 379 (1981).

Personal jurisdiction. — Where the plaintiff meets the residency requirements and the defendant submits to the jurisdiction of the trial court, the court can entertain and determine an action for divorce. *Seabrook v. Seabrook*, App. D.C., 264 A.2d 311 (1970).

Where a nonresident defendant to a divorce proceeding counterclaims for divorce, this is a voluntary act and it gives rise to personal jurisdiction. *Beckwith v. Beckwith*, App. D.C., 355 A.2d 537 (1976), aff'd, App. D.C., 379 A.2d 955 (1977), cert. denied, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Pending out-of-state divorce action. — Pendency of out-of-state divorce action is no bar to local action, and a stay of the local action as a matter of comity is a matter of discretion, which is not abused where the original action is not diligently prosecuted. *Archuleta v. Archuleta*, App. D.C., 345 A.2d 157 (1975), cert. denied, 425 U.S. 940, 96 S. Ct. 1677, 48 L. Ed. 2d 183 (1976).

Jurisdiction of foreign court. — Foreign country's court is without jurisdiction to grant a divorce where neither party is domiciled in that country nor even physically present there except for a few hours, and where absent spouses merely execute powers of attorney but enter no

appearances in court. *Clagett v. King*, App. D.C., 308 A.2d 245 (1973).

Foreign divorce. — Moving party in foreign divorce is estopped from questioning decree that he obtained. *Clagett v. King*, App. D.C., 308 A.2d 245 (1973).

Writs of ne exeat. — Courts of the District of Columbia may issue writs of ne exeat in support of their jurisdiction over the various marital actions. Ne exeat is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. *Gredone v. Gredone*, App. D.C., 361 A.2d 176 (1976).

Indigency. — Public policy of District with respect to divorce applications by indigent plaintiffs is to authorize such divorces. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

The public policy on the matter of divorce applications by indigent plaintiffs is for Congress and not the judicial branch of government. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Congress intended that rich and poor alike have equal right to a divorce. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Indigent applicants for divorce need not prove that social reason is served by severance of marital relationship. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Standing of minor children. — Party's minor children lack standing as "proper parties" to press an annulment claim to its conclusion after that party's death. *Nunley v. Nunley*, App. D.C., 210 A.2d 12 (1965).

Court's amendment of pleadings. — An amendment of the pleadings by the trial judge, sua sponte, in a divorce action for desertion on the ground that the proof adduced at trial established that the husband was entitled to a divorce for the wife's adultery amounts to the introduction after trial of a new cause of action and is an error. *Hagans v. Hagans*, App. D.C., 215 A.2d 842 (1966).

Supplemental complaint. — If an original complaint for divorce is filed prior to the expiration of the applicable time period under this section, plaintiff may file a supplemental complaint under Super. Ct. Dom. Rel. R. 15(d), and correct defects in the original complaint by setting forth facts occurring since the filing of the original. *Johnson v. Cuccias*, 120 WLR 737 (Super. Ct. 1992).

Reinstated divorce action. — Where divorce action is dismissed, then reinstated, it is restored to predissmissal status and is consid-

ered to be filed on the date stamped on the complaint. *Williams v. Williams*, App. D.C., 378 A.2d 668 (1977).

Dilatory counterclaim. — Dilatoriness may lead to a dismissal of a counterclaim in a divorce action. *Beckwith v. Beckwith*, App. D.C., 379 A.2d 955 (1977), cert. denied, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Denial of continuance upheld where moving party does not undertake discovery. — A denial of a continuance request in a divorce action is not an abuse of discretion where the moving party has been given the opportunity to undertake discovery, but has cancelled deposition sessions with her spouse. *Beckwith v. Beckwith*, App. D.C., 379 A.2d 955 (1977), cert. denied, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Res judicata. — Where a husband in an annulment action is barred, under the doctrine of res judicata, from attacking his wife's divorce from her former husband, it is irrelevant that the wife may have practiced fraud in obtaining her divorce. *Gullo v. Hirst*, App. D.C., 291 A.2d 504 (1972).

Failure of timely appeal notice. — A party who fails to timely inform the other party of her intention to appeal from a divorce decree is estopped from challenging the validity of the decree. *Neuman v. Neuman*, App. D.C., 377 A.2d 393 (1977).

Record on appeal. — Where there is no reporter's transcript of a divorce trial and the trial court certifies to the appellate court a statement of proceedings and evidence which it has expressly disapproved, there is no record upon which to conduct a review. *Dulles v. Dulles*, App. D.C., 302 A.2d 59 (1973), cert. denied, 415 U.S. 926, 94 S. Ct. 1432, 39 L. Ed. 2d 483 (1974).

Cited in *Lewis v. Lewis*, App. D.C., 206 A.2d 266 (1965); *McEachnie v. McEachnie*, App. D.C., 216 A.2d 169 (1966); *McDaniel v. McDaniel*, App. D.C., 254 A.2d 407 (1969); *Robinson v. Robinson*, App. D.C., 264 A.2d 305 (1970); *Brice v. Brice*, App. D.C., 411 A.2d 340 (1980); *Rachal v. Rachal*, App. D.C., 489 A.2d 476 (1985); *Williams v. Williams*, App. D.C., 495 A.2d 754 (1985); *Pimble v. Pimble*, App. D.C., 521 A.2d 1173 (1987); *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991); *Andrea v. Murillo*, 121 WLR 2133 (Super. Ct. 1993); *Davis v. Davis*, App. D.C., 663 A.2d 499 (1995).

II. VOLUNTARY SEPARATION.

Purpose of grounds. — Purpose of allowing a divorce for voluntary separation is to permit termination in law of marriages which have ceased to exist in fact. *Glendening v. Glendening*, App. D.C., 206 A.2d 824 (1965).

Voluntariness must exist as to both parties. — Voluntary separation must be volun-

tary on part of both parties. *Glendening v. Glendening*, App. D.C., 206 A.2d 824 (1965).

When separation became voluntary. — Where a person seeks a divorce on the ground of voluntary separation, it becomes incumbent upon the court to find when the separation became voluntary. *Williams v. Williams*, App. D.C., 378 A.2d 668 (1977).

Without finding of date when separation ripened into a voluntary separation, a divorce awarded on this basis cannot stand. *Bondurant v. Bondurant*, App. D.C., 283 A.2d 26 (1971).

Continuing voluntariness. — Absent proof of mutual consent to an initial separation of the parties to a divorce, the issue of continuing voluntariness of the separation for the required period of time is generally a question of fact for the trial judge. *Henderson v. Henderson*, App. D.C., 206 A.2d 267 (1965).

Question of continuing voluntariness of separation is generally a question of fact for the trial judge. *Glendening v. Glendening*, App. D.C., 206 A.2d 824 (1965).

If either spouse does not continuously acquiesce in a separation during the required period of time for a voluntary separation, this section does not authorize a divorce. *Henderson v. Henderson*, App. D.C., 206 A.2d 267 (1965).

Later consent or acquiescence. — Nature of separation at its inception is not determinative of its continuing character, but is only evidence thereof, and if one spouse does not agree to the separation at the beginning, that spouse may thereafter affirmatively consent or silently acquiesce therein for the required period. *Henderson v. Henderson*, App. D.C., 206 A.2d 267 (1965).

Separation which is initially involuntary may become voluntary where the deserted party makes it clear that she is not agreeable to reconciliation. *Smith v. Smith*, App. D.C., 256 A.2d 833 (1969).

Separation for statutory period. — One essential element that the complaining party must establish is that the separation was voluntary on the part of both parties for the statutory period. *Henderson v. Henderson*, App. D.C., 206 A.2d 267 (1965); *Lee v. Lee*, App. D.C., 307 A.2d 757 (1973).

Proof of voluntariness by actions of spouse. — Although husband's words on witness stand tended to indicate a lack of "voluntariness" on his part, where his actions indicated otherwise, the court granted legal separation from bed and board under paragraph (b)(1). *Moorehead v. Moorehead*, 118 WLR 637 (Super. Ct. 1990).

Dispute as to voluntariness. — In actions for divorce on grounds of voluntary separation, the trial judge must decide from all the testimony whether the spouse who disputes that the separation was voluntary did in good faith manifest a real desire to continue the marriage

status, "manifest" being defined as a plain or open desire to resume the marital relationship which must be directed to the petitioning party. *Henderson v. Henderson*, App. D.C., 206 A.2d 267 (1965); *Moorehead v. Moorehead*, 118 WLR 637 (Super. Ct. 1990).

Burden of proving lack of desire to continue marriage. — The petitioning party, if it cannot be proved that his spouse agreed to a separation throughout the required period or had silently acquiesced therein, must establish that the other spouse did not in good faith manifest a desire to continue the marriage, thus justifying the conclusion that there had been acquiescence in fact to the separation for the critical period. *Henderson v. Henderson*, App. D.C., 206 A.2d 267 (1965).

Burden of proving desire to reconcile. — Where a spouse admits that a separation had become voluntary, she has the burden, as the party challenging the continuing of the voluntariness, to show that she had changed her mind and wished a reconciliation. *Smith v. Smith*, App. D.C., 256 A.2d 833 (1969).

Out-of-state divorce. — Separation does not cease to be voluntary because of an out-of-state divorce where the parties' initial separation is mutually voluntary, there are no attempts at reconciliation, and the separation is devoid of cohabitation during the required period. *Jacobson v. Jacobson*, App. D.C., 277 A.2d 280 (1971).

III. DESERTION.

"Desertion" defined. — "Desertion" contemplates a voluntary separation of one party from the other without justification, an intention not to return and the absence of consent or connivance of the other party. *Stolar v. Stolar*, App. D.C., 359 A.2d 597 (1976).

Departure from "marital abode." — Departure from the "marital abode" is not necessary for a finding of desertion. *Edwards v. Edwards*, App. D.C., 356 A.2d 633 (1976).

Constructive desertion. — A spouse who seeks to justify his or her desertion by establishing constructive desertion on the part of the other spouse must do so by proving acts of cruelty sufficient to support a limited divorce. *Mazique v. Mazique*, 356 F.2d 801 (D.C. Cir.), cert. denied, 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691 (1966).

For desertion to be "constructive" spouse must show misconduct by other spouse forcing the former to abandon the marital abode. *Hales v. Hales*, App. D.C., 207 A.2d 657 (1965).

Failure to establish constructive desertion entitles opposing spouse to divorce on grounds of unwarranted desertion, providing the guilty party remained away for the required period. *Mazique v. Mazique*, 356 F.2d 801 (D.C. Cir.),

cert. denied, 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691 (1966).

IV. ADULTERY.

Clear and convincing evidence required. — Adultery must be proved by clear and convincing evidence, certain, free from suspicion of collusion, and corroborated by independent facts and circumstances. *Hagans v. Hagans*, App. D.C., 215 A.2d 842 (1966).

Hearsay testimony. — Hearsay testimony cannot corroborate a confession of adultery. *Hagans v. Hagans*, App. D.C., 215 A.2d 842 (1966).

V. CRUELTY.

Single assault. — Single assault will not necessarily constitute sufficient cruelty to sever the bonds of matrimony, although a single act of violence may be so severe and atrocious under particular circumstances as to satisfy this section. *Chapple v. Chapple*, App. D.C., 204 A.2d 815 (1964).

A single assault, where there is no showing that the spouse's health was impaired or that she had a reasonable apprehension of serious danger in the future and where there may have been provocation and consumption of alcohol leading up to the act, does not constitute cruelty so as to justify a divorce. *Chapple v. Chapple*, App. D.C., 204 A.2d 815 (1964).

But may constitute cruelty under certain conditions. — Where a wife is old in years and is not accustomed to financial deprivations and rough treatment, a single act of physical abuse and a course of conduct which causes a slight weight loss constitutes sufficient bodily injury to support a limited divorce for cruelty. *Ramos v. Ramos*, App. D.C., 291 A.2d 198 (1972).

Isolated assaults. — Isolated assaults do not necessarily constitute sufficient cruelty to justify the injured spouse in leaving the marital abode. *Hannon v. Hannon*, App. D.C., 220 A.2d 94 (1966).

VI. SEPARATION AGREEMENTS.

Consequences of violating separation agreement incorporated into decree. —

Where a separation agreement is incorporated into a decree of separation, any breach of the agreement is not a matter of breach of contract but is a violation of the decree, for which the remedy is different. *Mohler v. Mohler*, App. D.C., 302 A.2d 737 (1973).

A violation of a separation agreement incorporated in a decree of separation does not afford a legal basis to revise the support payments as provided in the agreement, absent a contention that the husband is no longer able to make the payments or that there has been any substan-

tial change in his financial situation. *Mohler v. Mohler*, App. D.C., 302 A.2d 737 (1973).

Subsequent divorce. — Where a separation agreement provides for a full settlement and determination of all matters and says that support payments to the wife are to continue until she remarries or dies, a subsequent divorce has no effect on the continued validity of this agreement although it says nothing about eventual divorce. *Mohler v. Mohler*, App. D.C., 302 A.2d 737 (1973).

Separation agreement is not product of duress where spouse is experienced businesswoman, has had prior dealings with the courts and attorneys in an earlier divorce action, and testifies that she understood and voluntarily entered into the agreement. *Fleischman v. Fleischman*, App. D.C., 285 A.2d 689 (1972).

Separation agreement upheld. — Settlement agreement is not unfair on its face and invalid where the parties were married for only a few years, where no children were born of the marriage, where spouse has extensive knowledge and experience in a well-paying employment field, where she did not contribute financially to any of the property acquired during the marriage, and where, under the agreement she is to receive most of household furniture and equipment, money for a new automobile, support payments for herself and her daughter, an education payment for the daughter and other insurance and medical benefits. *Fleischman v. Fleischman*, App. D.C., 285 A.2d 689 (1972).

§ 16-905. Revocation and enlargement of decree of legal separation.

(a) The court may revoke its decree of divorce from bed and board at any time, upon the joint application of the parties to be discharged from the operation of the decree.

(b) The court may enlarge its decree of legal separation to an absolute divorce upon application of the party to whom the decree of legal separation was granted, a copy of which application shall be duly served upon the adverse party, if the court finds on the basis of affidavits that no reconciliation has taken place or is probable and that a separation has continued voluntarily and without interruption for a six-month period or without interruption for a period of one year. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; 1973 Ed., § 16-905; Apr. 7, 1977, D.C. Law 1-107, title I, § 103, 23 DCR 8737.)

Legislative history of Law 1-107. — See note to § 16-902.

§ 16-906. Causes for absolute divorce arising after decree for separation.

Where a divorce from bed and board has been decreed the court may afterwards decree an absolute divorce between the parties for any cause arising since the first decree and sufficient to entitle the complaining party to the second decree. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; 1973 Ed., § 16-906.)

§ 16-907. Parent and child relationship defined.

(a) The term “legitimate” or “legitimated” means that the parent-child relationship exists for all rights, privileges, duties, and obligations under the laws of the District of Columbia.

(b) The term “born out of wedlock” solely describes the circumstances that a child has been born to parents who, at the time of its birth, were not married

to each other. The term “born in wedlock” solely describes the circumstances that a child has been born to parents who, at the time of its birth, were married to each other. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; 1973 Ed., § 16-907; Apr. 7, 1977, D.C. Law 1-107, title I, § 104, 23 DCR 8737.)

Legislative history of Law 1-107. — See A.2d 1246 (1987); In re M.M.D., App. D.C., 662 note to § 16-902. A.2d 837 (1995).

Cited in Gilliam v. Branton, App. D.C., 470 A.2d 743 (1983); S.A. v. M.A., App. D.C., 531

§ 16-908. Relationship not dependent on marriage.

A child born in wedlock or born out of wedlock is the legitimate child of its father and mother and is the legitimate relative of its father’s and mother’s relatives by blood or adoption. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; 1973 Ed., § 16-908; Apr. 7, 1977, D.C. Law 1-107, title I, § 105, 23 DCR 8737.)

Legislative history of Law 1-107. — See W.J.D. v. E.M., App. D.C., 467 A.2d 457 (1983); Gilliam v. Branton, App. D.C., 470 A.2d 743 note to § 16-902. (1983); Martin v. Tate, App. D.C., 492 A.2d 270 (1985).

Cited in Bazemore v. Davis, App. D.C., 394 A.2d 1377 (1978); District of Columbia ex rel. (1985).

§ 16-909. Proof of child’s relationship to mother and father.

(a) A child’s relationship to its mother is established by its birth to her. A child’s relationship to its father is established by proving by a preponderance of evidence that he is the father, and there shall be a presumption that he is the father:

(1) if he and the child’s mother are or have been married and the child is born during the marriage, or within 300 days after the termination of marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court; or

(2) if, prior to the child’s birth, he and the child’s mother have attempted to marry, and some form of marriage has been performed in apparent compliance with law, though such attempted marriage is or might be declared void for any reason, and the child is born during such attempted marriage, or within 300 days after the termination of such attempted marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court; or

(3) if, after the child’s birth, he and the child’s mother marry or attempt to marry, (with the attempt involving some form of marriage ceremony that has been performed in apparent compliance with law), though such attempted marriage is or might be declared void for any reason, and he has acknowledged the child to be his; or

(4) if the putative father has acknowledged paternity in writing.

(b) If questioned, a presumption created by section 16-909(a)(1) through (4) may be overcome upon proof by clear and convincing evidence that the presumed father is not the child’s father. The Superior Court shall try the question of paternity and shall determine whether the presumed father is or is not the father of the child.

(b-1) A conclusive presumption of paternity shall be created:

(1) Upon a genetic test result and an affidavit from a laboratory, certified by the American Association of Blood Banks, indicating a 99% probability that the putative father is the father of the child; or

(2) If the father has acknowledged paternity in writing as provided in section 16-909.1(a)(1).

(c) Upon the entry of a final judgment determining the parentage of a child by the Superior Court under the provisions of section 16-2341 et seq., section 16-909(b) or by any other court of competent jurisdiction upon a genetic test result and affidavit as provided in subsection (b-1)(1) of this section, or if the father has acknowledged paternity as provided in section 16-909.1(a), the parent-child relationship is conclusively established. A parent-child relationship that has been established pursuant to subsection (b-1)(1) of this section or section 16-909.1(a)(1) may be challenged upon the same grounds and through the same procedures as are applicable to a final judgment of the Superior Court.

(d) The parent-child relationship between an adoptive parent and a child may be established conclusively by proof of adoption. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; 1973 Ed., § 16-909; Apr. 7, 1977, D.C. Law 1-107, title I, § 106, 23 DCR 8737; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(3), 33 DCR 6710; June 18, 1991, D.C. Law 9-5, § 2(c), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 2(c), 38 DCR 4970; Mar. 16, 1995, D.C. Law 10-223, § 2(b), 41 DCR 8051.)

Cross references. — As to tests to establish parentage, see § 16-2343.

Effect of amendments. — D.C. Law 10-223 deleted “including an acknowledgment or agreement pursuant to section 16-909.1(a)(1) or (2)” from the end of (a)(4); inserted (b-1); and, in (c), inserted “upon a genetic test result and affidavit ... section 16-909.1(a)” in the first sentence and added the second sentence.

Legislative history of Law 1-107. — See note to § 16-902.

Legislative history of Law 6-166. — See note to § 16-924.

Legislative history of Law 9-5. — See note to § 16-909.1.

Legislative history of Law 9-39. — See note to § 16-909.1.

Legislative history of Law 10-223. — Law 10-223, the “Paternity Establishment Act of 1994,” was introduced in Council and assigned Bill No. 10-777, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-360 and transmitted to both Houses of Congress for its review. D.C. Law 10-223 became effective on March 16, 1995.

Mayor authorized to issue rules. — See note to § 16-909.2.

Jurisdiction. — Superior Court has jurisdiction over question of paternity when issue of adultery raised. *Beckwith v. Beckwith*, App. D.C., 355 A.2d 537 (1976), *aff'd*, App. D.C., 379 A.2d 955 (1977), *cert. denied*, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Failure to appoint guardian for child does not deny due process. — In an action for divorce based on adultery, where there is no indication that the interests of the mother conflict with those of her alleged out-of-wedlock minor child, and where the interests of the child are fully and ably protected by the mother, failure to appoint a guardian ad litem does not deny the child due process of law. *Beckwith v. Beckwith*, App. D.C., 355 A.2d 537 (1976), *aff'd*, App. D.C., 379 A.2d 955 (1977), *cert. denied*, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Provisions of section do not apply to inheritance. — The provisions of this section apply to divorce, annulment, separation, support, etc., and not to inheritance, and they cannot overcome the requirement, for purposes of inheritance, that parenthood must have been established at the time of death of the putative father. *In re Estate of Glover*, 110 WLR 2809 (Super. Ct. 1982).

Child may prove paternity by preponderance of evidence without benefit of presumption. — The fact that subsection (a)

of this section also establishes presumptions of paternity in specified situations does not alter the expressed right of a child to prove paternity by a preponderance of the evidence without the benefit of a presumption. *Gilliam v. Branton*, App. D.C., 470 A.2d 743 (1983).

Presumption of legitimacy rebutted. — Presumption of the legitimacy of a child born in wedlock was rebutted where, although the child was born during the marriage, the wife admitted that she had engaged in sexual relations outside the marriage in order to conceive and that the husband was unable to father a child. *Dews v. Dews*, App. D.C., 632 A.2d 1160 (1993).

Public documents and testimony of relatives may be considered in paternity determination. — In addition to acknowledgment by the putative parent, public documents such as birth certificates and testimony of the claimant's and the putative father's relatives should be considered in determining whether the claimant has established paternity by a preponderance of the evidence. *Gilliam v. Branton*, App. D.C., 470 A.2d 743 (1983).

Effect of acknowledgement. — There is no need to address the effect of a "conclusive presumption" in an evidentiary or trial context, inasmuch as the acknowledgment form recognized by this section — more so than a mere acknowledgment of paternity — is, in effect, a

waiver of any trial rights ab initio. If there is no longer any right to a trial, the court need not reach the issue of what evidentiary effect any presumption may have during that trial. Nor would any genetic tests be relevant to anything which is literally not before the court. *T.B. v. J.R.W.*, 124 WLR 417 (Super. Ct. 1996).

Human leukocyte antigen (HLA) test results. — Where not one single benefit would inure to child by ruling that human leukocyte antigen results should be admitted to defeat a claim for custody, the test results were not considered. *Andrea v. Murillo*, 121 WLR 2133 (Super. Ct. 1993).

Termination of rights of putative fathers. — Since neither putative father had established paternity in accordance with this section, the trial court had discretion to terminate any rights of the putative fathers. *In re T.M.*, App. D.C., 665 A.2d 207 (1995).

Duty to support child. — Former husband, who was only a stepfather to a child of his marriage, had no legal duty to support the child. *Dews v. Dews*, App. D.C., 632 A.2d 1160 (1993).

Cited in *In re Estate of Shorter*, App. D.C., 444 A.2d 954 (1982); *District of Columbia ex rel. W.J.D. v. E.M.*, App. D.C., 467 A.2d 457 (1983); *S.A. v. M.A.*, App. D.C., 531 A.2d 1246 (1987); *In re D.M.*, App. D.C., 562 A.2d 618 (1989); *Davis v. Davis*, App. D.C., 663 A.2d 499 (1995).

§ 16-909.1. Establishment of paternity by voluntary acknowledgment and based on genetic test results.

(a) Paternity may be established by:

(1) A written statement of the father and mother made under oath that acknowledges paternity, which may include a written statement made at a hospital within 60 days of the birth of a child on a form provided by the Mayor that sets forth the rights and responsibilities attendant to acknowledging paternity; or

(2) A genetic test and an affidavit from a laboratory, certified by the American Association of Blood Banks or the American Society of Histocompatibility, that affirms at least a 99% probability that the putative father is the father of the child.

(b) An acknowledgment in accordance with section 16-909.1(a)(1) or a genetic test and affidavit that meet the requirements of section 16-909.1(a)(2) shall legally establish the parent-child relationship between the father and the child for all rights, privileges, duties, and obligations under the laws of the District of Columbia. The acknowledgment or genetic test and affidavit shall be admissible as evidence of paternity.

(c) A public or private agency or institution that operates in the District of Columbia shall accept as adequate proof of paternity a birth certificate issued by the District of Columbia after the effective date of the District of Columbia

Paternity Establishment Temporary Act of 1991 [June 18, 1991] or other evidence that the requirements of section 16-909.1(a)(1) or (a)(2) have occurred.

(d) In the absence of an acknowledgment, or if the probability of paternity shown by a genetic test is less than 99%, paternity may be established as otherwise provided in this chapter. (June 18, 1991, D.C. Law 9-5, § 2(d), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 2(d), 38 DCR 4970; Mar. 16, 1995, D.C. Law 10-223, § 2(c), 41 DCR 8051; Apr. 18, 1996, D.C. Law 11-110, § 24(a), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 18(c), 44 DCR 1271.)

Section references. — This section is referred to in §§ 16-909, 16-2342.1, and 16-2345.

Effect of amendments. — D.C. Law 10-223 rewrote the section heading and (a) and (b).

D.C. Law 11-110 substituted “a genetic test” for “an genetic test” in (b).

D.C. Law 11-255 corrected the spelling of “acknowledgment” in the section.

Legislative history of Law 9-5. — Law 9-5 was, the “District of Columbia Paternity Establishment Temporary Act of 1991,” introduced in Council and assigned Bill No. 9-142. The Bill was adopted on first and second readings on March 5, 1991, and April 9, 1991, respectively. Signed by the Mayor on April 26, 1991, it was assigned Act No. 9-20 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-39. — Law 9-39, the “District of Columbia Paternity Establishment Act of 1991,” was introduced in Council and assigned Bill No. 9-2, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-76 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-223. — See note to § 16-909.

Legislative history of Law 11-110. — Law

11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 1, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

References in text. — The “effective date of the District of Columbia Paternity Establishment Temporary Act of 1991,” referred to in (c), is June 18, 1991.

Mayor authorized to issue rules. — See note to § 16-909.2.

Cited in T.B. v. J.R.W., 124 WLR 417 (Super. Ct. 1996).

§ 16-909.2. Full faith and credit to paternity determinations by other states.

The District of Columbia government shall give full faith and credit to the determinations of paternity made by other states, whether established through voluntary acknowledgment or through an administrative or judicial process. (Mar. 16, 1995, D.C. Law 10-223, § 2(d), 41 DCR 8051.)

Temporary addition of section. — Section 102(b) of D.C. Law 11-206 added a § 16-909.3 to read as follows:

“§ 16-909.3. Paternity acknowledgement program requirements for birthing hospitals.

“(a) For the purposes of this section the term “birthing hospital” shall mean a hospital that

has an obstetric care unit or provides obstetric services, or a birthing center associated with a hospital.

“(b)(1) Each public and private birthing hospital in the District of Columbia shall operate a hospital-based program that, immediately before and after the birth of a child, provides to

each unmarried woman who gives birth at the hospital and the putative father, if present in the hospital:

“(A) Written materials concerning paternity establishment;

“(B) Forms necessary to voluntarily acknowledge paternity;

“(C) A written description of the rights and responsibilities of establishing paternity;

“(D) The opportunity to speak, either by telephone or in person, with staff who are trained to clarify information and answer questions about paternity establishment; and

“(E) The opportunity to voluntarily acknowledge paternity in the hospital.

“(2) The Mayor shall provide to each birthing hospital the materials, in sufficient amounts to be distributed to all concerned parties under this act, described in paragraphs (1)(A) through (C) of this subsection.

“(c) The birthing hospital shall:

“(1) Afford the mother and putative father, if present in the hospital, due process safeguards;

“(2) Inform the mother and alleged putative father, if present in the hospital, that each is required to sign the voluntary acknowledgement of paternity form to effectuate the voluntary acknowledgement of paternity; and

“(3) Inform the mother and alleged putative father, if present in the hospital, that their signatures on the voluntary acknowledgement of paternity form must be authenticated by a notary or witness to effectuate the voluntary acknowledgement of paternity; and

“(4) Provide for the services of a notary on the premises of the birthing hospital.

“(d) The birthing hospital shall transmit each completed voluntary acknowledgement of paternity form to the Mayor within 14 days of completion. The Mayor shall promptly record identifying information from the form and permit the child support enforcement agency for the District timely access to the identifying information and any other documentation recorded from the form that the child enforcement agency needs to determine if a voluntary acknowledgement of paternity has been recorded or to seek a support order on the basis of the recorded voluntary acknowledgement of paternity.

“(e) The Mayor shall provide to staff of each birthing hospital training, guidance, and written instructions necessary to operate the paternity acknowledgment program required by this section.

“(f) The Mayor shall access the program of each birthing hospital each year.”

Section 101 of D.C. Law 11-206 provided that Title I of the act may be cited as the “Paternity Acknowledgment Temporary Act of 1996”.

Section 401(b) of D.C. Law 11-206 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of § 16-909.3, see § 102 of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Emergency Act of 1996 (D.C. Act 11-356, August 8, 1996, 43 DCR 4561); § 2 (b) of the Paternity Acknowledgment Congressional Review Emergency Act of 1996 (D.C. Act 11-423, October 28, 1996, 43 DCR 6136), § 2 (b) of the Paternity Acknowledgment Second Congressional Review Emergency Act of 1996 (D.C. Act 11-480, December 30, 1996, 44 DCR 212), and § 2(b) of the Paternity Acknowledgment Congressional Review Emergency Act of 1997 (D.C. Act 12-20, March 3, 1997, 44 DCR 1765).

For temporary designation of Title I of the act as the Paternity Acknowledgment Emergency Act of 1996, see § 101 of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Emergency Act of 1996 (D.C. Act 11-356, August 8, 1996, 43 DCR 4561).

Section 3 of D.C. Act 11-423 D.C. Act 11-480, and D.C. Act 12-20 provides that the enactment “will ensure that the District government remains eligible for approximately \$13 million in federal funds used in the collection of child support payments from noncustodial parents for the care of children who reside in the District.”

Legislative history of Law 10-223. — See note to § 16-909.

Legislative history of Law 11-206. — Law 11-206, the “Paternity Acknowledgment and Gas Station Advisory Board Reestablishment Temporary Act of 1996,” was introduced in Council and assigned Bill No. 11-748, which was retained by Council. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 5, 1996, it was assigned Act No. 11-378 and transmitted to both Houses of Congress for its review. D.C. Law 11-206 became effective on April 9, 1996.

Mayor authorized to issue rules. — Section 3 of D.C. Law 10-223 provided that, pursuant to Subtitle I of Chapter 15 of Title 1, the Mayor may issue rules to implement the provisions of the act.

§ 16-910. Dissolution of property rights; jurisdiction of court.

Upon the entry of a final decree of annulment or divorce in the absence of a valid ante-nuptial or post-nuptial agreement or a decree of legal separation disposing the property of the spouses, the court shall:

(a) assign to each party his or her sole and separate property acquired prior to the marriage, and his or her sole and separate property acquired during the marriage by gift, bequest, devise, or descent, and any increase thereof, or property acquired in exchange therefor; and

(b) distribute all other property accumulated during the marriage, regardless of whether title is held individually or by the parties in a form of joint tenancy or tenancy by the entireties, in a manner that is equitable, just and reasonable, after considering all relevant factors including, but not limited to: the duration of the marriage, any prior marriage of either party, the age, health, occupation, amount and sources of income, vocational skills, employability, assets, debts, and needs of each of the parties, provisions for the custody of minor children, whether the distribution is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of assets and income. The court shall also consider each party's contribution to the acquisition, preservation, appreciation, dissipation or depreciation in value of the assets subject to distribution under this subsection, and each party's contribution as a homemaker or to the family unit. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; 1973 Ed., § 16-910; Apr. 7, 1977, D.C. Law 1-107, title I, § 107, 23 DCR 8737.)

- I. In General.
- II. Ante-nuptial Agreements.
- III. Marital Property.
- IV. Separate Property.
- V. Procedural and Appellate Issues.

I. IN GENERAL.

Legislative intent. — The fact that Congress has retained tenancies by the entirety for the District indicates a preference for marital community interests over the competing interests of creditors. *Benson v. United States*, 442 F.2d 1221 (D.C. Cir. 1971).

In enacting this section, the legislature sought to facilitate the authority of judges to reach equitable results in divorce property dispositions without requiring the court to search for strict legal or equitable ownership interests in the nontitled spouse. *Hemily v. Hemily*, App. D.C., 403 A.2d 1139 (1979).

In codifying the trial court's power to distribute all property acquired during a marriage under this section, the legislature did expressly exempt from such distribution property acquired otherwise. *Hemily v. Hemily*, App. D.C., 403 A.2d 1139 (1979).

Construction. — Import of section as a whole is that the court properly should focus on

the circumstances under which a property was originally brought into a marriage. *Hemily v. Hemily*, App. D.C., 403 A.2d 1139 (1979).

Section is intended to endow the court which entered the divorce decree with the power to adjudicate, in the same action, the property rights of the parties before it. *Hardy v. Hardy*, 250 F. Supp. 956 (D.D.C. 1966).

Section does not affect the general equitable power of a court to adjudicate a dispute between parties concerning their respective rights in property acquired by them during marriage. *Travis v. Benson*, App. D.C., 360 A.2d 506 (1976).

Jurisdiction of federal courts. — Partition actions and other matters incidental to real property actions are considered local civil actions and are no longer within the jurisdiction of the United States District Court. *Coll v. Coll*, 690 F. Supp. 1085 (D.D.C. 1988).

Section does not augment court's jurisdiction. — Court must adjust and appportion

property rights in same proceeding in which divorce decree is entered, but only if it has jurisdiction to do so, as this section does not give the court authority to hear issues over which it has no jurisdiction. *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

Choice of law. — District of Columbia court applied law of another jurisdiction rather than this section where the only relationship of the District to a claim regarding the ownership of property outside the District was that the District provided a forum with jurisdiction over the defendant. *Williams v. Williams*, App. D.C., 390 A.2d 4 (1978).

II. ANTE-NUPTIAL AGREEMENTS.

Ante-nuptial contracts. — Ante-nuptial contracts contemplating divorce are acceptable to arrange property rights. *Burtoff v. Burtoff*, App. D.C., 418 A.2d 1085 (1980).

And such agreements are not necessarily void as against public policy. *Burtoff v. Burtoff*, App. D.C., 418 A.2d 1085 (1980).

Judicial review of ante-nuptial contracts. — Courts will scrutinize an ante-nuptial agreement more carefully than an ordinary contract because of the likelihood that the contracting parties have not been dealing at arm's length. *Burtoff v. Burtoff*, App. D.C., 418 A.2d 1085 (1980).

And if such agreement appears fair, then challenging party must prove whether the contract was voluntarily entered, and whether it was entered after full disclosure of the assets. *Burtoff v. Burtoff*, App. D.C., 418 A.2d 1085 (1980).

Mutual rescission of settlement offer. — Where settlement offer is mutually rescinded the divorce case is set for trial. *Sirianni v. Sirianni*, App. D.C., 338 A.2d 101 (1975).

Oral settlement agreement outside statute of frauds. — Authorizing the filing of pretrial praecipe and withdrawing a countersuit is sufficient to bring an oral settlement agreement outside the statute of frauds. *Brown v. Brown*, App. D.C., 343 A.2d 59 (1975).

Agreement disadvantageous to spouse. — If agreement disadvantages one spouse, then other spouse must show that the disadvantaged spouse signed freely and voluntarily, with full knowledge of the other's assets. *Burtoff v. Burtoff*, App. D.C., 418 A.2d 1085 (1980).

Reliance precluded. — Material failure of performance by the party who seeks to enforce an ante-nuptial agreement may preclude that party from relying on the agreement to defeat marital rights. *Burtoff v. Burtoff*, App. D.C., 418 A.2d 1085 (1980).

Effect on property interests. — Ante-nuptial agreement can create interest in spouse who does not hold title. *Brice v. Brice*, App. D.C., 411 A.2d 340 (1980).

Couple can retain tenancy by entirety or joint tenancy after marriage is dissolved if they so agree. *Hardy v. Hardy*, 250 F. Supp. 956 (D.D.C. 1966).

III. MARITAL PROPERTY.

Effect of divorce decree as determination of property rights. — Although a divorce decree is ineffective to accomplish a transfer of title by its own force where the property is located outside the District, it is effective as a determination of property rights as between the parties. *Quarles v. Quarles*, App. D.C., 353 A.2d 285, cert. denied, 429 U.S. 922, 97 S. Ct. 321, 50 L. Ed. 2d 290 (1976).

Requirement for exemption from distribution. — A threshold requirement that must be satisfied in order for property to be exempt under this section from distribution is that it be "the sole and separate property" of one spouse. *Hemily v. Hemily*, App. D.C., 403 A.2d 1139 (1979); *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979).

Property apportionment and fund tracing. — There is no room under subsection (a) of this section for apportioning property or tracing funds; that role is reserved specifically for subsection (b) of this section. *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979).

Discretion as to date of valuation. — This section does not impose a duty on a trial court to distribute marital and separate property within a prescribed period after the trial court receives evidence of its value. *McDiarmid v. McDiarmid*, App. D.C., 649 A.2d 810 (1994).

Discretion of trial court. — Trial court's discretion in allocating property under this section is broad. *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979); *Brice v. Brice*, App. D.C., 411 A.2d 340 (1980).

This section vests the trial judge with considerable discretion and does not require fiscal equality. *Mumma v. Mumma*, App. D.C., 280 A.2d 73 (1971).

The court's discretion under this section is broad. *Murville v. Murville*, App. D.C., 433 A.2d 1106 (1981); *Barbour v. Barbour*, App. D.C., 464 A.2d 915 (1983).

This section gives the trial court broad discretion in distributing property accumulated during marriage. *Hairston v. Hairston*, App. D.C., 454 A.2d 1369 (1983).

A trial court is accorded broad discretion in adjusting property rights of parties incident to divorce. *Powell v. Powell*, App. D.C., 457 A.2d 391 (1983); *Gassaway v. Gassaway*, App. D.C., 489 A.2d 1073 (1985).

The Court of Appeals has consistently applied the well-settled principle that the trial court has considerable discretion and broad authority in distributing marital property as

part of a judgment of divorce. *Dews v. Dews*, App. D.C., 632 A.2d 1160 (1993).

And unaffected by subsection (b). — The court's broad discretion in allocating property is unaffected by subsection (b) of this section. *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979).

Prospective application of subsection (b) intended. — The current version of subsection (b) of this section is intended to apply prospectively to all property distributions made in connection with divorce decrees entered after April 7, 1977. *McCree v. McCree*, App. D.C., 464 A.2d 922 (1983).

Purpose of subsection (b). — Subsection (b) was enacted to ensure that spouses who had made nonmonetary contributions to the joint marital enterprise would no longer be disadvantaged in property settlements because they had not made monetary contributions toward the acquisition of particular marital assets, or because such assets were not jointly titled. *McCree v. McCree*, App. D.C., 464 A.2d 922 (1983).

Subsection (b) of this section does not require that marital property be divided equally. *Barbour v. Barbour*, App. D.C., 464 A.2d 915 (1983).

Nonexhaustive list. — Reference to nonexhaustive list of considerations set forth in subsection (b) ensures that property of the spouses will be distributed to former spouses as justified by the facts of individual cases, so as to avoid arbitrary or inequitable divestitures of property formal title to which was vested in but 1 spouse. *McCree v. McCree*, App. D.C., 464 A.2d 922 (1983).

Compliance with subsection (b). — To comply with subsection (b), the court must consider all relevant factors, which vary in each case, and arrive at a disposition based upon an assessment of the totality of the circumstances. *Joel v. Joel*, App. D.C., 559 A.2d 769 (1989).

In distributing property accumulated during marriage pursuant to subsection (b) of this section, the court must consider all factors relevant to the case before it and make its final determination based on an assessment of the circumstances as a whole. *Negretti v. Negretti*, App. D.C., 621 A.2d 388 (1993).

Nonmonetary contributions. — While a trial judge should generally place a monetary value on the nonmonetary contributions, particularly when requested to do so and a formula is proposed, in the absence of any evidence in the record on appeal to suggest that the wife's contributions were anything other than "quite modest," requiring such a valuation would appear superfluous. *Ealey v. Ealey*, App. D.C., 596 A.2d 43 (1991).

Length of marriage. — A marriage of long duration does not make a distribution substantially favoring one party either an abuse of

discretion or an indication that the relevant factors under this section were not considered. *Mosley v. Mosley*, App. D.C., 601 A.2d 599 (1992).

Equitable interest in home not jointly owned. — Husband's payment of monthly mortgage obligation during marriage was a substantial contribution that created an equitable interest in home owned by wife prior to marriage. *Yeldell v. Yeldell*, App. D.C., 551 A.2d 832 (1988).

Husband's equitable interest in house owned by wife was in the nature of an equitable lien; it encumbered the property, but did not give the husband any ownership or possessory interest. *Yeldell v. Yeldell*, App. D.C., 551 A.2d 832 (1988).

Husband's equitable interest in house owned by wife should have been considered in distributing property, but house should have remained sole and separate property of wife. *Yeldell v. Yeldell*, App. D.C., 551 A.2d 832 (1988).

The Court of Appeals adopted a new rule of law in *Yeldell v. Yeldell*, 551 A.2d 832 (D.C. 1988), employing the "inception of the title" theory, that a home purchased prior to a marriage remains the sole and separate property of the purchaser, regardless of contributions from the nonpurchasing spouse during the course of the marriage; however, the nonpurchasing spouse could be granted an equitable interest in the home based upon the reasonable value of his or her contributions to the property during the marriage, determined as of the date of the divorce, which would be in the nature of an equitable lien, encumbering the property but not giving the nonpurchasing spouse any ownership or possessory interest in the home. *Sanders v. Sanders*, App. D.C., 602 A.2d 663 (1992).

The value of a nonpurchasing spouse's equitable interest in the sole property of a purchasing spouse must be calculated in dollars as of the time of the divorce, not as a percentage of the value of the property. *Sanders v. Sanders*, App. D.C., 602 A.2d 663 (1992).

Trial court did not abuse its discretion in deferring a wife's receipt of her interest in the marital home which was the sole and separate property of the husband, where, should the husband default on his obligations to pay child support, the wife could require him to divide the real estate and extract her interest in the property, as an incentive to encourage him to make timely payments. *Sanders v. Sanders*, App. D.C., 602 A.2d 663 (1992).

Equitable distribution required. — Section requires trial court to make equitable, just, and reasonable distribution of the household contents. *Hackes v. Hackes*, App. D.C., 446 A.2d 396 (1982).

Types of property. — This section carefully limits types of property over which court may exercise its discretion. *Turner v. Taylor*, App. D.C., 471 A.2d 1010 (1984).

Disposition of contested property is within court's broad discretion. — The disposition of contested property pursuant to subsection (b) of this section is within the exercise of the trial court's broad discretion in domestic relations matters. *Broadwater v. Broadwater*, App. D.C., 449 A.2d 286 (1982).

Totality of circumstances. — The court's decision as to whether property is the sole and separate property of one spouse is to be based upon an assessment of the totality of the circumstances. *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979).

Inchoate claims. — Inchoate claim was marital property. *Boyce v. Boyce*, App. D.C., 541 A.2d 614 (1988).

Transformation of "marital property." — If the property initially was acquired as "marital property" during the course of the marriage, it will remain so for the purposes of this section. *Hemily v. Hemily*, App. D.C., 403 A.2d 1139 (1979).

"Marital property" cannot be transformed into "sole and separate property acquired during the marriage by gift ..." for the purposes of assignment under subsection (a) of this section by a subsequent action of a spouse such as the purported gift of sole ownership from one spouse to the other. *Hemily v. Hemily*, App. D.C., 403 A.2d 1139 (1979).

Transformation of "sole and separate" property. — Property which originally was acquired by a spouse in one of the ways enumerated in subsection (a) of this section can, under the particular circumstances of a given marriage, come to be considered property subject to distribution under subsection (b) of this section. *Brice v. Brice*, App. D.C., 411 A.2d 340 (1980); *Darling v. Darling*, App. D.C., 444 A.2d 20 (1982).

Joint property falls within subsection (b). — If and when the property is put in joint names, for whatever reason, then it is no longer exempted under subsection (a) of this section, but rather falls within subsection (b) of this section, under which the trial court is to determine how the property is to be distributed. *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979).

Findings of fact and conclusions of law. — Where the trial court provides only conclusory findings unsupported by subsidiary findings or by an explication of the court's reasoning with respect to the relevant facts, a reviewing court must remand to the trial court with instructions to make findings of fact and conclusions of law with respect to the issues, accompanied by its reasoning regarding the division of the family home in light of such

findings, and to consider proposals for the modification of the challenged disposition of such property. *Pimble v. Pimble*, App. D.C., 521 A.2d 1173 (1987); *Joel v. Joel*, App. D.C., 559 A.2d 769 (1989).

In dividing marital property, a trial court's findings of fact, conclusions of law, and judgment, when taken together, must present an integrated, internally consistent, and readily understood whole. *Negretti v. Negretti*, App. D.C., 621 A.2d 388 (1993).

Consideration of enumerated factors. — The legislature has merely enumerated in this section several nonexclusive factors that the trial court is to consider in the exercise of its discretion. *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979).

The trial court is to distribute property accumulated during marriage upon consideration of all relevant factors. *Hairston v. Hairston*, App. D.C., 454 A.2d 1369 (1983).

Financial contribution not decisive factor. — Direct financial contribution is not sole or decisive factor in settling property rights upon dissolution of a marriage. *King v. King*, App. D.C., 286 A.2d 234 (1972).

Under this section the trial court is obliged to consider the amount each party contributed toward the property, but that element alone is not controlling. *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979).

That a spouse assisted in operating business is sufficient to support property division. *Hunt v. Hunt*, App. D.C., 208 A.2d 731 (1965).

Authority to divide jointly held real property. — This section provides that the trial court shall divide the property between the spouses. Whether the spouses as co-owners choose to sell the property, or to effectuate a buy-out by one spouse or to otherwise bring a partition action, may properly be left for subsequent determination within the discretion of the trial court. *Liedekerke v. Liedekerke*, App. D.C., 635 A.2d 339 (1993).

Where the trial court divides personal property on an equal basis, there is no equitable or reasonable ground for dividing the jointly held real property on a different basis, particularly where the parties agreed to pool their resources and share them equally. *Lee v. Lee*, App. D.C., 290 A.2d 388 (1972).

Unless a divorce is granted or the parties consent, the trial court is without the authority to order a division of jointly held property. *Maynard v. Maynard*, App. D.C., 360 A.2d 45 (1976).

Trial court has statutory authority to order the equitable distribution of a marital estate as part of a decree of divorce concerning real property in which the divorcing spouses have an equitable interest. *Gore v. Gore*, App. D.C., 638 A.2d 672 (1994).

Marital home placed into tenancy by the entirety ownership form was subject to division under subsection (b). *Liedekerke v. Liedekerke*, App. D.C., 635 A.2d 339 (1993).

Equal contributions to purchase. — It is not error to divide property equally where both parties were employed and contributed equally to the purchase and upkeep of the property. *Lee v. Lee*, App. D.C., 307 A.2d 757 (1973).

Interest in jointly held property conditioned on performance of marriage vows. — Where jointly held property is involved, and the evidence shows that the husband contributed the bulk, if not all, of the funds for the purchase thereof, the wife's interest is deemed to be conditioned on her faithful performance of the marriage vows. *Mazique v. Mazique*, 356 F.2d 801 (D.C. Cir.), cert. denied, 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691 (1966).

When real property is purchased entirely by one spouse, and title is taken in the names of both as tenants by the entirety, the consideration to be implied for the share of the nonpurchasing spouse is the faithful performance of his or her marriage vows. *King v. King*, App. D.C., 286 A.2d 234 (1972).

Nonpurchasing spouse takes equal share in property held in tenancy by entirety in consideration of faithful performance of her marriage vows. *Sebold v. Sebold*, 444 F.2d 864 (D.C. Cir. 1971).

Faithful performance of marriage vows not single decisive factor. — The trial court is not controlled by any single factor, such as faithful performance of marriage vows, in making its property distribution. *Hairston v. Hairston*, App. D.C., 454 A.2d 1369 (1983).

IV. SEPARATE PROPERTY.

Authority to award property not jointly held. — Authority to award property not jointly held is found in general equity power. *Mumma v. Mumma*, App. D.C., 280 A.2d 73 (1971).

Property held in single name. — Where property is held solely in name of one spouse, the other spouse must make a showing of a legal or equitable interest therein. *Mazique v. Mazique*, 356 F.2d 801 (D.C. Cir.), cert. denied, 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691 (1966).

Trial court did not err in declining to trace funds allegedly due former wife from property which was a gift to her from her father with the proviso that upon his death she pay to her sisters a certain sum each. *Dews v. Dews*, App. D.C., 632 A.2d 1160 (1993).

Although wife's name was not on the deed to the house, that fact alone did not preclude her claim that the house was marital property distributable under subsection (b). *Singer v. Singer*, App. D.C., 636 A.2d 422 (1994).

Title is irrelevant. — Title is irrelevant to property distribution determinations. *Barbour v. Barbour*, App. D.C., 464 A.2d 915 (1983).

Reasons for sole ownership irrelevant. — Reasons for individual holding title to family home by himself are not relevant to a property distribution proceeding since holding title individually does not shield the property from the court's jurisdiction. *Murville v. Murville*, App. D.C., 433 A.2d 1106 (1981).

Award of home to husband within judge's discretion. — Where neither husband nor wife had made a significant financial contribution to purchase or improve their house and property and only the husband was obligated to repay the loans which had made possible the purchase and improvements, the mere listing of the parties as joint tenants was not dispositive on the issue of legal entitlement following a divorce, and it was within the trial judge's discretion to award the home entirely to the husband. *Benvenuto v. Benvenuto*, App. D.C., 389 A.2d 795 (1978).

Marital home acquired during marriage. — Where the marital home was acquired during the parties' marriage, it was deemed marital property, and the court accordingly had broad discretion under this section to distribute it, without regard to title, in an equitable, just and reasonable manner. *Jordan v. Jordan*, App. D.C., 616 A.2d 1238 (1992).

Proceeds from sale of marital home divisible. — Trial court had jurisdiction pursuant to this section to distribute between the ex-husband and wife the proceeds from the sale of the marital home in which they had lived as husband and wife during their marriage, and which they had received as a gift to both of them from the husband's parents. *Singer v. Singer*, App. D.C., 623 A.2d 1226 (1993), remanded, App. D.C., 636 A.2d 422 (1994).

Property within District. — If real property under consideration is District realty, the court has authority to award or to apportion it in such manner as is found to be equitable, just and reasonable. *Argent v. Argent*, App. D.C., 233 A.2d 142 (1967), rev'd on other grounds, 396 F.2d 695 (D.C. Cir. 1968).

Property located out-of-state. — Where property is located out-of-state, the court is empowered to "determine" and "adjudicate" the couples' rights to the property, but not to "award" or "apportion" the foreign property. *McGean v. McGean*, App. D.C., 339 A.2d 384 (1975).

Court lacks power to dissolve title to real estate in another jurisdiction. *Bondurant v. Bondurant*, App. D.C., 283 A.2d 26 (1971).

But may direct parties to transfer rights. — The court cannot award and apportion out-of-state property, but it still has jurisdiction to determine and adjudicate the property rights of the parties before it and can direct

the parties to execute such instruments as are necessary to effectuate that adjudication. *Argent v. Argent*, 396 F.2d 695 (D.C. Cir. 1968).

Both spouses have interest in ante-nuptial gift to both spouses. — Gift of house by husband's parents made upon announcement of engagement, even though made before the parties consummated the marriage, was sufficient to give the wife a marital interest in the real property upon the occurrence of the marriage. *Singer v. Singer*, App. D.C., 623 A.2d 1226 (1993), remanded, App. D.C., 636 A.2d 422 (1994).

Opportunities for future acquisition of assets. — The court is not permitted to equate informal access to property or unenforceable expectations of inheritance with the kinds of assets or opportunities "for future acquisition of assets" that can justifiably be considered in allocating marital property. A court must base its findings of assets or opportunities to acquire assets on a spouse's legal or equitable interest in marital or nonmarital property and/or on a predictable earning capacity. *Gassaway v. Gassaway*, App. D.C., 489 A.2d 1073 (1985).

Disposition of stock acquired before marriage. — Where there was no evidence establishing that, immediately before his divorce, appellant still owned any particular stock purchased before his marriage, the trial court did not clearly err in finding that the stocks appellant owned at the end of the marriage were marital property, even though held in his name alone. *Jordan v. Jordan*, App. D.C., 616 A.2d 1238 (1992).

Disposition of stock acquired after separation but prior to divorce upheld. — Trial court's disposition to wife of shares of stock she acquired after separation but prior to divorce through an employment purchase plan authorizing stock acquisition in lieu of 10 percent of her salary was equitable, just, and reasonable. *Powell v. Powell*, App. D.C., 457 A.2d 391 (1983).

Commissions received via pyramidal sales hierarchy. — Wife was entitled to thirty-five percent of all commissions received by her husband from those agents who joined pyramidal sales hierarchy during the existence of the parties' marriage, and entitlement to those commissions would continue as long as commissions were received by the husband. *Robinson v. Robinson*, 124 WLR 1617 (Super. Ct. 1996).

Pension benefits. — Since a pension constitutes property, to the extent that the right to such property was acquired during marriage, the pension should be deemed "marital property" subject to distribution under subsection (b) of this section. *Barbour v. Barbour*, App. D.C., 464 A.2d 915 (1983).

Civil Service pension benefits may constitute marital property subject to equitable distribu-

tion under subsection (b) of this section. *Barbour v. Barbour*, App. D.C., 464 A.2d 915 (1983).

The distribution of property in accordance with this section may encompass pension rights acquired during the course of the marriage, to be distributed in an equitable, just, and reasonable manner. *Sanders v. Sanders*, App. D.C., 602 A.2d 663 (1992).

Foreign service annuity. — The trial court did not err in denying the wife's claim to a share in her husband's foreign service annuity as her separate property. *Finch v. Finch*, App. D.C., 378 A.2d 1092 (1977).

Personal injury award. — A \$1,000,000.00 judgment award, plus interest received by the defendant for personal injuries, was marital property, even though it was for personal injuries sustained by him after the parties had separated. *Bethel v. Bethel*, 119 WLR 885 (Super. Ct. 1991).

If a substantial portion of the judgment award is for future loss of earnings, future pain and suffering and medical expenses to be incurred, and for permanent disability, and only a small portion thereof is compensation for past loss of earnings and medical expenses incurred during the marriage up to the time of the divorce, the trial court would have the discretion to award only a small portion thereof to the spouse of the injured party. *Bethel v. Bethel*, 119 WLR 885 (Super. Ct. 1991).

Partnership distributions. — Where wife had been awarded portion of 40 estimated quarterly distributions from husband's partnership, subsequent distribution that did not exist at time of trial, and about which court had no previous knowledge, was separate property subject to trial court's jurisdiction to distribute under subsection (b); and court's subsequent order awarding wife a portion of the new partnership distribution was not affected by husband's appeal from the original judgment of divorce and property division. *Tydings v. Tydings*, App. D.C., 567 A.2d 886 (1989).

Goodwill. — Goodwill of a professional practice acquired during a marriage is marital property subject to valuation and distribution. *McDiarmid v. McDiarmid*, App. D.C., 649 A.2d 810 (1994).

Law degree as marital property. — Where husband attained his degree primarily through his own efforts and his willingness to work continuously while undergoing the rigors attendant to the pursuit of his goal, the wife should not be awarded an equitable interest in his future earnings as such an award would suggest that the law degree represented a mutual effort on the part of the parties. *Hill v. Hill*, 114 WLR 2209 (Super. Ct. 1986).

Medical bills. — Where the husband had acquiesced to coverage of medical costs related to wife's surgery, the order requiring him to

submit insurance claim forms should have encompassed all the outstanding medical bills which were incurred during the parties' marriage. *Bowser v. Bowser*, App. D.C., 515 A.2d 1128 (1986).

Third party interests in property. — Under an "equitable distribution" regime, a third party's legal title cannot be permitted to extinguish all or part of a spouse's equitable interest. *Gore v. Gore*, App. D.C., 638 A.2d 672 (1994).

V. PROCEDURAL AND APPELLATE ISSUES.

Ownership determination prerequisite to appeal. — This section requires that, as part of a divorce decree, the court shall make a final determination as to the future ownership of each item of marital property prior to any appeal. *McDiarmid v. McDiarmid*, App. D.C., 594 A.2d 79 (1991).

Tax liabilities. — Tax liabilities are appropriate and relevant factors for consideration in dividing property upon divorce. *Leftwich v. Leftwich*, App. D.C., 442 A.2d 139 (1982).

Creation of tenancy by entirety as conditional gift subject to divestiture. — In the District of Columbia the creation of a tenancy by the entirety in property acquired through the sole contribution of one spouse is a gift conditioned upon fulfillment of the marital vows and continuance of the married state, so that desertion by a spouse and subsequent divorce upon those grounds may result in a divestiture of the conditional gift in favor of the innocent spouse purchaser. *Williams v. Williams*, App. D.C., 390 A.2d 4 (1978).

Tax lien for separate debt cannot attach to property. — Where parties remain the uninterrupted beneficial owners of property since its acquisition, a federal tax lien against one of the parties for a separate debt cannot attach to the property after a divorce. *Benson v. United States*, 442 F.2d 1221 (D.C. Cir. 1971).

Property disposition upheld where all relevant factors considered. — Where the trial judge considers all relevant factors in his award of former jointly owned property, the final disposition is within his discretion and may not be disturbed on appeal. *King v. King*, App. D.C., 286 A.2d 234 (1972).

As long as a trial court properly applies the statutory guidelines and considers "all relevant factors," its conclusion will not be disturbed on appeal. *Powell v. Powell*, App. D.C., 457 A.2d 391 (1983).

Abuse of discretion determined by totality of circumstances assessment. — Though a comparison of the value of property each party received might show the distribution clearly favored a party, that alone does not establish an abuse of discretion, since the issue is to be determined by an assessment of the

totality of circumstances. *Murville v. Murville*, App. D.C., 433 A.2d 1106 (1981).

No error to exclude evidence of adulterous relationship. — It is not error to preclude cross-examination on the issue of whether the husband had been carrying on an adulterous relationship, even though it would not necessarily have been error for the court to have taken that fact into consideration in allocating property. *Murville v. Murville*, App. D.C., 433 A.2d 1106 (1981).

Award of possession and 60% ownership of marital home to husband upheld. — Where the trial court, after hearing testimony from both parties as well as medical testimony concerning the husband's degenerating spinal arthritis, awarded the husband possession and 60% ownership interest in the marital home, the sole jointly-owned asset of the couple, and first right within a specific period of time to purchase the wife's resultant 40% ownership interest at market value, the Court of Appeals held that the court's division of the ownership interests in the marital home was in accordance with subsection (b) of this section and supported by the evidence. *Broadwater v. Broadwater*, App. D.C., 449 A.2d 286 (1982).

Jointly-owned house distributable, solely-owned land exempt. — Where land on which husband and wife built their marital home was given to husband alone by his parents but the couple together borrowed money to build the house, the jointly-held marital home is distributable marital property, but the underlying land is exempt from marital distribution. *Browne v. Browne*, 112 WLR 613 (Super. Ct. 1984).

Execution of joint return cannot be compelled. — The propriety of considering tax matters in divorce proceedings is not a license for the Court to compel a party to execute a joint return. *Leftwich v. Leftwich*, App. D.C., 442 A.2d 139 (1982).

Order by Family Division compelling spouse to cooperate in filing joint return would nullify right of election conferred upon married taxpayers by the Internal Revenue Code. *Leftwich v. Leftwich*, App. D.C., 442 A.2d 139 (1982).

Property allegedly destroyed by spouse 7 years before commencement of action may not be subject of award. — Court exceeded its authority in awarding money to wife in compensation for her property which husband allegedly destroyed some 7 years before commencement of the action for divorce. *Turner v. Taylor*, App. D.C., 471 A.2d 1010 (1984).

Effect of disposition on property rights. — Once determined, property rights stemming from a division under this section are no different in their finality from any other creation or transfer of property rights. *Carter v. Carter*, App. D.C., 516 A.2d 917 (1986), cert. denied,

481 U.S. 1054, 107 S. Ct. 2193, 95 L. Ed. 2d (1987); *Farmer v. Farmer*, App. D.C., 526 A.2d 1365 (1987).

Partition of property. — In an action for partition involving the original parties to the property division under a divorce decree, where the full rights of the parties are uncertain from a reading of the entire decree, a court has the power to determine whether the decree itself, taken as a whole and considered in the context of the divorce proceedings, imposes limitations or conditions on the cotenancy interests affecting the right of partition. *Carter v. Carter*, App. D.C., 516 A.2d 917 (1986), cert. denied, 481 U.S. 1054, 107 S. Ct. 2193, 95 L. Ed. 2d (1987).

Court authority to call witnesses. — Wife was entitled to call party with whom husband had a relationship as a witness, and to examine both party and the husband with respect to any allegedly inequitable divestitures. *Cox v. Cox*, App. D.C., 639 A.2d 97 (1994).

Action meriting civil contempt. — A party's failure to make a good-faith attempt to

comply with a court order to sell the former marital abode merits the sanction of civil contempt. *Bolden v. Bolden*, App. D.C., 376 A.2d 430 (1977).

Cited in *Gabrielian v. Gabrielian*, App. D.C., 473 A.2d 847 (1984); *Miller v. Miller*, App. D.C., 487 A.2d 1156 (1985); *Bowser v. Bowser*, App. D.C., 515 A.2d 1128 (1986); *In re Henderson*, 115 WLR 1409 (Super. Ct. 1987); *Tydings v. Tydings*, 115 WLR 2225 (Super. Ct. 1987); *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988); *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988); *Clay v. Faison*, App. D.C., 583 A.2d 1388 (1990); *Fullard v. Fullard*, 118 WLR 337 (Super. Ct. 1990); *Newton v. Newton*, 118 WLR 1517 (Super. Ct. 1990); *Bortnick v. Young*, 118 WLR 2089 (Super. Ct. 1990); *Weiner v. Weiner*, App. D.C., 605 A.2d 18 (1992); *Andrea v. Murillo*, 121 WLR 2133 (Super. Ct. 1993); *Tesfamariam v. District of Columbia Dep't of Consumer & Regulatory Affairs, Ins. Admin.*, App. D.C., 645 A.2d 1105 (1994); *Haft v. Haft*, 124 WLR 1825 (Super. Ct. 1996).

§ 16-911. Alimony pendente lite; suit money; enforcement; custody of children.

(a) During the pendency of an action for divorce, or an action by the husband or wife to declare the marriage null and void, where the nullity is denied by the other spouse, the court may:

(1) require the husband or wife to pay alimony to the other spouse for the maintenance of himself or herself and their minor children committed to such other spouse's care, and suit money, including counsel fees, to enable such other spouse to conduct the case, whether as the plaintiff or the defendant, and enforce any order relating thereto by attachment, garnishment and/or imprisonment for disobedience;

(2) enjoin any disposition of a spouse's property to avoid the collection of the allowances so required;

(3) if a spouse fails or refuses to pay the alimony or suit money, sequester his or her property and apply the income thereof to such objects;

(4) if a party under court order to make payments under this section is in arrears, order the party to make an assignment of part of his or her salary, wages, earnings or other income to the person entitled to receive the payments; and

(5) determine who shall have the care and custody of a minor child or children pending the proceedings, without conclusive regard to the race, color, national origin, political affiliation, sex or sexual orientation, in and of itself, of a party according to procedures set forth in this section. The court may award joint or sole custody according to the best interest of the child. In determining the care and custody of a minor child, the best interest of the child shall be the primary consideration. Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children

and for the sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between the minor child or children and the parents regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in D.C. Code section 16-1001(5), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Code § 6-2101), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Code § 6-2131), or where parental kidnapping as defined in D.C. Code section 16-1021 through section 16-1026 has occurred. There shall be a rebuttable presumption that joint custody is not in the best interest of the child or children if a judicial officer finds by a preponderance of the evidence that an intrafamily offense as defined in D.C. Code section 16-1001(5), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Code § 6-2101), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Code § 6-2131), or where parental kidnapping as defined in D.C. Code section 16-1021 through section 16-1026 has occurred. To determine the best interest of the child, for the purpose of making a joint or sole custody determination, the court shall consider all relevant factors, including, but not limited to:

- (A) the wishes of the child as to his or her custodian, where practicable;
- (B) the wishes of the child's parent or parents as to the child's custody;
- (C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest;
- (D) the child's adjustment to his or her home, school, and community;
- (E) the mental and physical health of all individuals involved;
- (F) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;
- (G) the willingness of the parents to share custody;
- (H) the prior involvement of each parent in the child's life;
- (I) the potential disruption of the child's social and school life;
- (J) the geographical proximity of the parental homes as this relates to the practical considerations of the child's or children's residential schedule;
- (K) the demands of parental employment;
- (L) the age and number of children;
- (M) the sincerity of each parent's request;
- (N) the parent's ability to financially support a custody arrangement;
- (O) the impact on Aid to Families with Dependent Children and medical assistance;
- (P) the benefit to the parents; and
- (Q) evidence of an intrafamily offense as defined in section 16-1001(5).

(a-1) For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an

intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(a-2)(1) A custody order may include:

- (A) sole legal custody;
- (B) sole physical custody;
- (C) joint legal custody;
- (D) joint physical custody; or

(E) any other custody arrangement the court may determine is in the best interest of the child.

(2)(A) In any custody proceeding under this chapter, the court may order each parent to submit a detailed parenting plan which shall delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interest of the minor child or children. The parenting plan may include, but shall not be limited to, provisions for:

- (i) the residence of the child or children;
- (ii) the financial support based on the needs of the child or children and the actual resources of the parent;
- (iii) visitation;
- (iv) holidays, birthdays, and vacation visitation;
- (v) transportation of the child or children between the residences;
- (vi) education;
- (vii) religious training, if any;
- (viii) access to the child's or children's educational, medical, psychiatric, and dental care records;
- (ix) except in emergencies, the responsibility for medical, psychiatric, and dental treatment decisions;
- (x) communication between the child and the parents; and
- (xi) resolving conflict such as a recognized family counseling or mediation service before application to the court to resolve a conflict.

(B) The court shall consider the parenting plans submitted by the parents in evaluating the factors set forth in subsection (a) of this section and in fashioning a custody order.

(C) The court shall designate the parent who will make the major decisions concerning the health, safety, and welfare of the child that need immediate attention.

(D) The court may also order either or both parents to attend parenting classes.

(3) Joint custody shall not eliminate the responsibility for child support in accordance with the applicable child support guideline as set forth in section 16-916.1.

(4)(A) An award of custody may be modified or terminated upon the motion of one or both parents, or on the court's own motion, upon a determination that there has been a substantial and material change in circumstances and that such modification or termination is in the best interest of the child.

(B) When a motion to modify custody is filed, the burden of proof is on the party seeking a change, and the standard of proof shall be by a preponderance of the evidence.

(C) The provision of this act shall apply to motions to modify or terminate any award of custody filed after the enactment date of this act.

(5) The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's or children's interests.

(6)(A) The court shall enter an order for any custody arrangement which is agreed to by both parents unless clear and convincing evidence indicates that such arrangement is not in the best interest of the minor child or children.

(B) An objection by one parent to any custody arrangement shall not be the sole basis for refusing the entry of an order that the court determines is in the best interest of the minor child or children.

(C) The court shall place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents.

(D) The mere enactment of this act does not, in and of itself, constitute a substantial and material change in circumstances and, therefore, may not constitute the sole basis for modifying or terminating a custody award.

(b) The attachment, garnishment, or assignment under paragraphs (1) and (4) of subsection (a) is binding on the employer, trustee, or other payor of salary, wages, earnings, or other income. No employer shall discharge or otherwise discipline an employee because of such attachment, garnishment, or assignment.

(c) Upon its own motion or upon motion of either party, the court may order at any time, that maintenance or support payments be made to the clerk of the court for remittance to the person entitled to receive the payments. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; 1973 Ed., § 16-911; Oct. 1, 1976, D.C. Law 1-87, § 14, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 108, 23 DCR 8737; Aug. 25, 1994, D.C. Law 10-154, § 2(a), 41 DCR 4870; May 16, 1995, D.C. Law 10-255, § 14(b), 41 DCR 5193; Apr. 18, 1996, D.C. Law 11-110, § 24(b), 43 DCR 530; Apr. 18, 1996, D.C. Law 11-112, § 2(a), 43 DCR 574; Apr. 9, 1997, D.C. Law 11-255, § 18(d), 44 DCR 1271.)

Cross references. — As to attachment and garnishment of remuneration of District employee to enforce child support or alimony, see § 1-516.

As to use of habeas corpus in connection with custody of children, see § 16-1908.

As to uniform child custody jurisdiction and marital or parent and child long-arm jurisdiction, see Chapter 45 of this title.

As to orders for support of substantially retarded person and their enforcement as orders for temporary alimony, see § 21-1111.

As to interception of District income tax refunds of individuals in arrears in court-ordered child support payments, see § 47-1812.11.

Section references. — This section is referred to in §§ 16-912 and 16-916.

Effect of amendments. — D.C. Law 10-255 made stylistic changes in (a)(5).

D.C. Law 11-110 validated previously made stylistic changes in (a)(5)(D) and (E).

D.C. Law 11-112 rewrote (a)(5) and inserted (a-2).

D.C. Law 11-255 substituted "chapter" for "subsection" in (a-2)(2)(A); substituted "subsection (a) of this section" for "this subsection" in (a-2)(2)(B); and substituted "interest" for "interests" in (a-2)(6)(A).

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-107. — See note to § 16-902.

Legislative history of Law 10-154. — Law 10-154, the "Evidence of Intrafamily Offenses in Child Custody Cases Act of 1994," was introduced in Council and assigned Bill No. 10-7, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-270 and transmitted to both Houses of Congress for its review. D.C. Law 10-154 became effective on August 25, 1994.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 11-110. — See note to § 16-909.1.

Legislative history of Law 11-112. — See note to § 16-916.3.

Legislative history of Law 11-255. — See note to § 16-909.1.

Purpose of (a)(1). — Paragraph (a)(1) is designed to encourage voluntary settlement of divorce disputes and to discourage litigation as a means to force a settlement by attrition. Tydings v. Tydings, App. D.C., 567 A.2d 886 (1989).

Purpose of temporary alimony. — The purpose of temporary alimony is to furnish a needy spouse with funds sufficient to prevent the spouse from becoming a public charge while his or her rights are being adjudicated. Burtoff v. Burtoff, App. D.C., 418 A.2d 1085 (1980).

Court may award alimony pendente lite without inquiry into merits. — Where the wife is unable to support herself and the husband is capable of rendering financial assistance, the trial court may award alimony pen-

dente lite without inquiring into the merits of her action for divorce. Kreuz v. Kreuz, App. D.C., 354 A.2d 867 (1976).

Liability for expenses of divorce action. — Husband can be held liable for expenses incurred by wife in divorce action only if the divorce court so orders during the pendency of the action. Meyers & Batzell v. Moezie, App. D.C., 208 A.2d 627 (1965).

Determining amount of alimony or maintenance award. — D.C. Code §§ 16-911 and 16-916 plainly authorize the court to award alimony and maintenance. There are no fixed rules or formulas; each determination must rest upon the particular facts of each case. The factors to be considered are the duration of the marriage; the ages and health of the parties; their respective financial positions, past and prospective; their contributions to the family; the needs of the requesting spouse; the other spouse's ability to pay; and society's interest in preventing the needy spouse from becoming a public charge. Smith v. Smith, 116 WLR 1969 (Super. Ct. 1988).

Determination of net income. — Determination of party's net income is essential to issue of ability to pay alimony and child support, and his spouse's counsel fees and legal expenses. Grasty v. Grasty, App. D.C., 302 A.2d 218 (1973).

Enforcement authority under section not limited by other doctrines. — Neither the traditional doctrine of supersedeas nor the more restrictive philosophy reflected in the related general statutory attachment procedures mandate limitation of the exercise of the distinct and supplemental enforcement authority provided by this section. Campbell v. Campbell, App. D.C., 353 A.2d 276 (1976).

Prospective modification of support obligation. — A court may prospectively increase or decrease support obligation as of the date when the moving party applied for the modification. Smith v. Smith, App. D.C., 427 A.2d 928 (1981).

No retroactive modification of past-due support payments. — The court may not retroactively modify the sum owing from accumulated, past-due support payments, even though the family has not formally reduced the debt to a money judgment. Smith v. Smith, App. D.C., 427 A.2d 928 (1981).

Accrued, unpaid support installments are collectible debts. — When a person fails to make support payments due under a court order, each accrued, unpaid installment becomes a collectible debt. Smith v. Smith, App. D.C., 427 A.2d 928 (1981).

Burden on defendant to show excuse for noncompliance with order. — When faced with a motion for contempt establishing noncompliance with a support order, the defendant bears the burden of showing an inability to pay

or some other excuse for failure to comply. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Contempt of court as sanction for non-compliance. — Persons subject to a court order to pay alimony pendente lite may be held in contempt of court and are subject to attachment, garnishment and/or imprisonment for noncompliance. *Hackes v. Hackes*, App. D.C., 446 A.2d 396 (1982).

Imprisonment for debt disfavored. — The law generally disfavors imprisonment for debt, such as for failure to provide support for one's family as ordered by the court in connection with divorce. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Attorney's fees generally. — This section provides the exclusive remedy for failure to pay counsel fees. *Meyers & Batzell v. Moezie*, App. D.C., 208 A.2d 627 (1965).

The basic purpose of counsel fees provision in subsection (a)(1) of this section is to ensure that a party in a divorce action not be hindered unfairly in maintaining the action by unequal burdens between the spouses. *Norris v. Norris*, 110 WLR 601 (Super. Ct. 1982).

A motion for attorney's fees in any appeal would usually be referred to the division of the court which decided that appeal on the merits. *Rachal v. Rachal*, App. D.C., 489 A.2d 476 (1985).

Determining amount of attorney's fees. — Proper factors for the court to weigh in determining the amount of attorney's fees awarded pursuant to subsection (a)(1) are the quality of the services rendered, the skills of counsel, the result of the litigation, the difficulty of the case, and the ability to pay attorney's fees, as well as the respective earning capacities of the parties. *Rachal v. Rachal*, App. D.C., 489 A.2d 476 (1985).

An award of attorney's fees should be based on the actual services performed by the attorney in question. The fact that the litigation may have been burdensome or oppressive to the party requesting such fees may properly be considered by the court in deciding whether to grant the request at all, but it should not be considered in determining the amount of the award. *Rachal v. Rachal*, App. D.C., 489 A.2d 476 (1985).

Neither prior decisions nor sound policy prohibit equalizing the burden of litigation under paragraph (a)(1), even when a party, in a strict sense, does not need assistance from the other side. *Tydings v. Tydings*, App. D.C., 567 A.2d 886 (1989).

Where a settlement agreement authorized the court to grant reasonable attorney's fees, and the case law arising under statutory provisions established the standard for deciding what was reasonable, the fact that the court reached the same result by following the statutory provisions and the case law that it would

have reached if it had followed the language of the settlement agreement rendered the technical error harmless. *King v. King*, App. D.C., 579 A.2d 659 (1990).

Showing required to prove counsel fees abused discretion. — It would require an extremely strong showing to convince a court that an award of counsel fees is so arbitrary as to constitute an abuse of discretion. *Darling v. Darling*, App. D.C., 444 A.2d 20 (1982).

Payment of counsel fees by attorney. — This section does not authorize the court to require an attorney for a party, in some circumstances, to pay counsel fees personally. *Charles v. Charles*, App. D.C., 505 A.2d 462 (1986).

Evidence needed to prove nonpayment of counsel fees. — Where a spouse admits that he has not paid counsel fees due under a court judgment, no further evidence is needed on the matter. *Edmonds v. Edmonds*, App. D.C., 212 A.2d 534 (1965).

Reasonable counsel fees on appeal allowed. — Although a husband's appeal from an order contained in a final decree of divorce may not be frivolous, the wife is allowed reasonable counsel fees on appeal. *Thunberg v. Thunberg*, App. D.C., 283 A.2d 444 (1971).

Attorneys fees allowed in motion for reconsideration. — It was not an abuse of discretion to reimburse husband's attorney fees where husband was obliged to respond to wife's motion for reconsideration in order to protect the award of custody to him which trial court had found to be in the best interests of the children. *Prost v. Greene*, App. D.C., 675 A.2d 471 (1996).

Punitive damages. — Punitive damages are beyond power of divorce court to grant. *Rachal v. Rachal*, App. D.C., 489 A.2d 476 (1985).

Wage assignment. — When a party is in arrears on one type of court-ordered payment (e.g., child support), the court may order a wage assignment under subsection (a)(4) not only as to that type of payment but also as to any other type which the court may require under § 16-916 (e.g., attorney's fees). *Martin v. Tate*, App. D.C., 492 A.2d 270 (1985).

Court as parens patriae. — In a child custody case, the court acts as parens patriae. *Bazemore v. Davis*, App. D.C., 394 A.2d 1377 (1978).

Child's best interest sole criterion in parent's custody dispute. — In a dispute between the biological parents over custody, the sole consideration is the best interest of the child. *Bazemore v. Davis*, App. D.C., 394 A.2d 1377 (1978).

A parent's interest in a relationship with his or her child should be accommodated, if it is possible to do so without an overriding risk to the child's best interest. *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

Custody awards between unmarried parents. — Guided by the best interest of the child, the court applied the same criteria to the award of custody to unmarried parents, where both parents have actively participated in the upbringing of the child. *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

Although this section and § 16-914 are not directly applicable to actions between two parents who were never married to each other the statutes applicable to custody awards to married people should be examined as representing the legislature's considered weighing of the competing rights among the parents of a child and the child regarding the assignment of the child's custody. *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

Joint custody. — The statutory language existing prior to the recent adoption of express guidelines for the award of joint custody, did not support the contention that the legislature previously disapproved of joint custody awards. *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

When making joint custody awards to unmarried parents, the court should recognize that the fact that the parents are not married may have a bearing in the consideration of individual factors. *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

Court to decide custody without applying presumptions. — In a dispute between a natural mother and father over custody of their child, the trial court shall decide the delicate question of what is the child's best interest solely by reference to the facts of the particular case and without resort to the crutch of a presumption in favor of either party. *Bazemore v. Davis*, App. D.C., 394 A.2d 1377 (1978).

Prerequisite to meaningful custody review. — Written findings of fact and separate conclusions of law are a prerequisite to meaningful appellate review of a child custody award. *O'Meara v. O'Meara*, App. D.C., 355 A.2d 561 (1976).

Trial judge's deference to custody agreement. — Court's view, that unless the parties had considered the statutory factors imposed upon a court in determining a child's best interest, the court owed no deference to the

parents' initial custody agreement, is not the law. *Foster-Gross v. Puente*, App. D.C., 656 A.2d 733 (1995).

Where hearing not required. — In an action for divorce, where trial court awarded custody of children to father, the trial court was not required to hold a further hearing for the purposes of determining whether husband had assaulted wife in front of children, given that the original trial lasted 12 days, there were seven volumes of testimony, and both parties made substantial arguments. *Prost v. Greene*, App. D.C., 675 A.2d 471 (1996).

Appellate review of child custody cases. — In child custody cases, the appellate court accords great deference to the trial judge and will uphold his award even where there is evidence which might lead to an opposite decision. *Dorsett v. Dorsett*, App. D.C., 281 A.2d 290 (1971).

Trial court determinations of child custody are subject to reversal only for clear abuse of discretion. This is particularly the case where order under review is pendente lite, and where continuance of status quo does not conflict with the best interests of the child. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989) [decision prior to enactment of § 16-916.1. See *A.S. v. District of Columbia ex rel. B.R.*, App. D.C., 593 A.2d 646 (1991)].

Cited in *Wolf v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 397 A.2d 936 (1979); *Turpin v. Turpin*, App. D.C., 403 A.2d 1144 (1979); *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979); *Smith v. Smith*, App. D.C., 445 A.2d 666 (1982), cert. denied, 459 U.S. 1115, 103 S. Ct. 749, 74 L. Ed. 2d 968 (1983); *Williams v. Williams*, App. D.C., 495 A.2d 754 (1985); *Steadman v. Steadman*, App. D.C., 514 A.2d 1196 (1986); *Shelton v. Bradley*, App. D.C., 526 A.2d 579 (1987); *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990); *Moorehead v. Moorehead*, 118 WLR 637 (Super. Ct. 1990); *Sanders v. Sanders*, App. D.C., 602 A.2d 663 (1992); *Fullard v. Fullard*, App. D.C., 614 A.2d 515 (1992); *E.S. v. L.S.*, 122 WLR 573 (Super. Ct. 1994); *McDiarmid v. McDiarmid*, App. D.C., 649 A.2d 810 (1994).

§ 16-912. Permanent alimony; enforcement; retention of dower.

When a divorce is granted to either spouse, the court may decree him or her permanent alimony sufficient for his or her support and that of any minor children whom the court assigns to that spouse's care, and secure and enforce the payment of the alimony in the manner prescribed by section 16-911, and may, if it seems appropriate, retain to the wife her right of dower in the husband's estate; and the court may, in similar circumstances, retain to the husband his right of dower in the wife's estate. (Dec. 23, 1963, 77 Stat. 562,

Pub. L. 88-241, § 1; 1973 Ed., § 16-912; Oct. 1, 1976, D.C. Law 1-87, § 15, 23 DCR 2544.)

Cross references. — As to attachment and garnishment of remuneration of District employee to enforce child support or alimony, see § 1-516.

Legislative history of Law 1-87. — See note to § 16-911.

Purpose of alimony. — Alimony is not intended as a penalty nor as compensation. *McEachnie v. McEachnie*, App. D.C., 216 A.2d 169 (1966); *King v. King*, App. D.C., 286 A.2d 234 (1972).

Factors in determination of award and amount. — Factors to be considered in determining whether alimony is granted and amount thereof are the duration of the marriage, the ages and health of the parties, their respective financial positions, both past and prospective, the wife's contribution to the family support and property ownership, the needs of the wife and the husband's ability to contribute thereto, and the interest of society generally in preventing her from becoming a public charge. *McEachnie v. McEachnie*, App. D.C., 216 A.2d 169 (1966); *Tibbs v. Tibbs*, App. D.C., 223 A.2d 279 (1966).

Income. — The determination of party's net income is essential to issue of ability to pay alimony and child support. *Grasty v. Grasty*, App. D.C., 302 A.2d 218 (1973).

Although trial judges have a considerable measure of discretion in determining the appropriate amount of alimony and child support, it is essential that they first determine the net income from which a portion is to be set aside for alimony and support payments, as such items are recurring expenditures. *Mumma v. Mumma*, App. D.C., 280 A.2d 73 (1971).

Improper considerations. — An alimony award predicated upon assertion that party could use additional money is erroneous. *McEachnie v. McEachnie*, App. D.C., 216 A.2d 169 (1966).

Time limitations. — It is improper to impose a time limitation upon alimony payments. *King v. King*, App. D.C., 286 A.2d 234 (1972).

Standard of review for alimony award. — An appellate court may reverse an award of alimony only where the finding is plainly wrong or without substantial evidence to support it. *McEachnie v. McEachnie*, App. D.C., 216 A.2d 169 (1966).

Alimony award upheld. — An award of monthly alimony is not an abuse of discretion where the figure involved represents the difference between her monthly expenses and monthly income, including any separate maintenance award. *Finch v. Finch*, App. D.C., 378 A.2d 1092 (1977).

An award of alimony is not plainly wrong or

without substantial evidence to support it where the court considers the duration of the marriage, the parties' standard of living, the future earning prospects of each, and the wife's continuing medical problems and her inability to hold a job in "stressful situations." *Bradt v. Bradt*, App. D.C., 300 A.2d 445 (1973).

Original support order is conclusive upon parties absent showing of material change. — The original support order is conclusive upon the parties absent a showing of material change since the time of decree in the ability to pay or the needs of the children. *McGean v. McGean*, App. D.C., 339 A.2d 384 (1975).

Increase in support payments allowed under certain circumstances. — Increasing child support payments after hearing the needs of the child, the ability of the husband to pay, and the financial circumstances of the parties, is within the scope of the court's discretion. *Brown v. Brown*, App. D.C., 343 A.2d 59 (1975).

Rehabilitative alimony. — The trial court abused its discretion in awarding alimony subject to automatic reduction based on specified, future occurrences; that approach (which includes the concept sometimes referred to as "rehabilitative alimony") is not permitted in this jurisdiction. *Joel v. Joel*, App. D.C., 559 A.2d 769 (1989).

Prospective changes in support obligation. — A court may prospectively increase or decrease support obligation as of the date when the moving party applied for the modification. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

No retroactive modification of past-due support payments. — The court may not retroactively modify the sum owing from accumulated, past-due support payments, even though the family has not formally reduced the debt to a money judgment. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Accrued, unpaid support installments are collectible debts. — When a person fails to make support payments due under a court order, each accrued, unpaid installment becomes a collectible debt. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Burden on defendant to show excuse for noncompliance with order. — When faced with a motion for contempt establishing noncompliance with a support order, the defendant bears the burden of showing an inability to pay or some other excuse for failure to comply. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Education of children. — The court may require husband to contribute to his daughter's further education until she reaches majority, providing she has requisite capacity and he can

afford to do so. *Mumma v. Mumma*, App. D.C., 280 A.2d 73 (1971).

Nonmonetary contributions. — While a trial judge should generally place a monetary value on the nonmonetary contributions, particularly when requested to do so and a formula is proposed, in the absence of any evidence in the record on appeal to suggest that the wife's contributions were anything other than "quite modest," requiring such a valuation would appear superfluous. *Ealey v. Ealey*, App. D.C., 596 A.2d 43 (1991).

Failure to pay child support. — The court

has the authority to jail a party for failing to make child support payments as are set out in the decree dissolving his marriage. *Wells v. Wells*, App. D.C., 358 A.2d 648 (1976).

Imprisonment for debt disfavored. — The law generally disfavors imprisonment for debt, such as for failure to provide support for one's family as ordered by the court in connection with divorce. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Cited in *Tydings v. Tydings*, 115 WLR 2225 (Super. Ct. 1987).

§ 16-913. Alimony when divorce is granted.

When a divorce is granted on the application of the husband or wife, the court may require him or her to pay alimony to the other spouse, if it seems just and proper. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; 1973 Ed., § 16-913; Oct. 1, 1976, D.C. Law 1-87, § 16(a), 23 DCR 2544.)

Legislative history of Law 1-87. — See note to § 16-911.

Factors to be considered in determination of award. — In determining whether to make an award, and in what amount, the trial court should consider the duration of the marriage, the number and age of the children, the age and health of the parties, their respective economic conditions — both present and prospective — the wife's contribution to the accumulation of the husband's property, the circumstances under which the divorce was granted, the effect, if any, upon the family and the interest of society generally to prevent a person, wherever possible, from becoming a public charge. *Majette v. Majette*, App. D.C., 261 A.2d 824 (1970); *Weiner v. Weiner*, App. D.C., 605 A.2d 18 (1992).

Desertion. — Desertion, while a bar to separate maintenance, is not an absolute bar to alimony. *Kessler v. Kessler*, App. D.C., 397 A.2d 932 (1979).

Desertion is a factor which must be considered in the judgment of what would be a just and proper determination of whether to award alimony and if so, the amount thereof. *Kessler v. Kessler*, App. D.C., 397 A.2d 932 (1979).

Proof that a wife has abandoned her marital abode and the concomitant responsibilities of the marital relation without just cause or reason may properly be considered in determining whether to award her alimony, especially where she presents but minimal evidence relating to her contribution to the family property and she refuses to testify with respect to her present income and ability to earn a living. *Mazique v. Mazique*, 356 F.2d 801 (D.C. Cir.), cert. denied, 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691 (1966).

Nonmonetary contributions. — While a trial judge should generally place a monetary value on the nonmonetary contributions, particularly when requested to do so and a formula is proposed, in the absence of any evidence in the record on appeal to suggest that the wife's contributions were anything other than "quite modest," requiring such a valuation would appear superfluous. *Ealey v. Ealey*, App. D.C., 596 A.2d 43 (1991).

Standard of review. — An award under this section will not be disturbed unless there is abuse of discretion made manifest by the record. *Majette v. Majette*, App. D.C., 261 A.2d 824 (1970).

The trial court's determination of the propriety of the award under all circumstances will not be disturbed, unless an abuse of discretion is made manifest by the record. *Mazique v. Mazique*, 356 F.2d 801 (D.C. Cir.), cert. denied, 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691 (1966).

Failure to specify alimony not fatal where evidence heard. — Where the court hears evidence on the issue of whether alimony should be granted, and the amount thereof, it is not fatal for it to use the word "support" in lieu of "alimony." *Mitchell v. Mitchell*, App. D.C., 310 A.2d 837 (1973).

Detailed statement of reasons for action taken needed. — Where the trial court merely states that it finds the husband to be able to underwrite an alimony award but there is no mention of the fact that the wife requires any amount for her support nor how the amount is arrived at, a more detailed statement of the reasons for the action taken is needed. *Wood v. Wood*, App. D.C., 309 A.2d 103 (1973).

Cited in Tydings v. Tydings, 115 WLR 2225
(Super. Ct. 1987).

§ 16-914. Retention of jurisdiction as to alimony and custody of children.

(a)(1) After the issuance of a decree of divorce granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders relating to those matters. With respect to matters of custody and visitation, the race, color, national origin, political affiliation, sex, or sexual orientation, in and of itself, of a party shall not be a conclusive consideration.

(2) Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children and for the sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between the minor child or children and the parents regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in D.C. Code section 16-1001(5), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Code § 6-2101), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Code § 6-2131), or where parental kidnapping as defined in D.C. Code section 16-1021 through section 16-1026 has occurred. There shall be a rebuttable presumption that joint custody is not in the best interest of the child or children if a judicial officer finds by a preponderance of the evidence that an intrafamily offense as defined in D.C. Code section 16-1001(5)), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Code § 6-2101), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Code § 6-2131), or where parental kidnapping as defined in D.C. Code section 16-1021 through section 16-1026 has occurred.

(3) In determining the care and custody of infant children, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors, including, but not limited to:

- (A) the wishes of the child as to his or her custodian, where practicable;
- (B) the wishes of the child's parent or parents as to the child's custody;
- (C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest;
- (D) the child's adjustment to his or her home, school, and community;
- (E) the mental and physical health of all individuals involved;

- (F) evidence of an intrafamily offense as defined in section 16-1001(5);
- (G) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;
- (H) the willingness of the parents to share custody;
- (I) the prior involvement of each parent in the child's life;
- (J) the potential disruption of the child's social and school life;
- (K) the geographic proximity of the parental homes as this relates to the practical considerations of the child's or children's residential schedule;
- (L) the demands of parental employment;
- (M) the age and number of children;
- (N) the sincerity of each parent's request;
- (O) the parent's ability to financially support a joint custody arrangement;
- (P) the impact on Aid to Families with Dependent Children and medical assistance; and
- (Q) the benefit to the parents.

(a-1) For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(a-2) The mere enactment of the Joint Custody of Children Act of 1996 does not, in and of itself, constitute a substantial and material change in circumstances and, therefore, may not constitute the sole basis for modifying or terminating a custody award.

(b) Notice of a custody proceeding shall be given to the child's parents, guardian, or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; 1973 Ed., § 16-914; Oct. 1, 1976, D.C. Law 1-87, § 17, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 109, 23 DCR 8737; Aug. 25, 1994, D.C. Law 10-154, § 2(b), 41 DCR 4870; Apr. 18, 1996, D.C. Law 11-112, § 2(b), 43 DCR 574.)

Effect of amendments. — D.C. Law 11-112 designated the first and second paragraphs of (a) as (a)(1) and (a)(3), respectively, and redesignated former (a)(1) through (6), as (a)(3)(A) through (F), respectively; inserted present (a)(2); added (a)(3)(G) through (Q); and inserted (a-2).

Legislative history of Law 1-87. — See note to § 16-911.

Legislative history of Law 1-107. — See note to § 16-902.

Legislative history of Law 10-154. — See note to § 16-911.

Legislative history of Law 11-112. — See note to § 16-916.3.

References in text. — The "Joint Custody of Children Act of 1996," referred to in (a-2), is

D.C. Law 11-112, which is codified in §§ 16-911, 16-914, and 16-916.3.

Scope of section. — Although both subsection (a) and § 30-504 allow for modification of custody and support decrees *ad infinitum*, these sections do not permit court to hear custody and support cases over which it has no personal jurisdiction. *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990).

Effect of pre-litigation or mid-litigation agreement. — Provisions concerning custody and child support would continue to be within the court's jurisdiction despite pre-litigation or mid-litigation arbitration or agreement. *Spencer v. Spencer*, App. D.C., 494 A.2d 1279 (1985).

Relationship of spouses. — Where wife's behavior towards husband both before and after the parties' separation caused judge to fear that wife would limit the children's contact with husband regardless of any court order, the judge properly took this into account in determining custody. *Prost v. Greene*, App. D.C., 652 A.2d 621 (1995).

Time limitations. — It is improper to impose a time limitation upon alimony payments. *King v. King*, App. D.C., 286 A.2d 234 (1972).

Termination of alimony. — Alimony does not automatically terminate solely because a former wife is living with an individual and having sexual relations with him. *Alibrando v. Alibrando*, App. D.C., 375 A.2d 9 (1977).

Alimony modification unjustified where income decline self-induced. — The court did not abuse its discretion by refusing to modify an alimony obligation where a decline in income is self-induced. *Tydings v. Tydings*, App. D.C., 349 A.2d 462 (1975).

Unchanged circumstances. — Where circumstances remain unchanged, there is no need to disturb original custody order. *Monacelli v. Monacelli*, App. D.C., 296 A.2d 445 (1972).

Noncustodial party not advantaged by further consideration of custody. — Setting a date for further consideration of the matter of custody confers no greater right upon the non-custodial party than she already has, as the case always remains open. *Monacelli v. Monacelli*, App. D.C., 296 A.2d 445 (1972).

Court as *parens patriae*. — The court in child custody case acts as *parens patriae*. *Bazemore v. Davis*, App. D.C., 394 A.2d 1377 (1978).

Human leukocyte antigen (HLA) test results. — Where not one single benefit would inure to child by ruling that human leukocyte antigen results should be admitted to defeat a claim for custody, the test results were not considered. *Andrea v. Murillo*, 121 WLR 2133 (Super. Ct. 1993).

Child's best interest sole criterion in parents' custody dispute. — In a dispute between the biological parents over custody, the

sole consideration is the best interest of the child. *Bazemore v. Davis*, App. D.C., 394 A.2d 1377 (1978).

Violence between spouses. — The relevance of violence between spouses to the issue of fitness to assume custody is well-recognized. *Prost v. Greene*, App. D.C., 652 A.2d 621 (1995).

Custody during litigation. — Judge's refusal to give predominant weight to one parent's sole custody over 15 months, where party had custody during the pendency of the litigation, was not an abuse of discretion. *Prost v. Greene*, App. D.C., 652 A.2d 621 (1995).

Court to decide custody without applying presumption. — In a dispute between the natural mother and father over custody of their child, the trial court shall decide the delicate question of what is the child's best interests solely by reference to the facts of the particular case and without resort to the crutch of a presumption in favor of either party. *Bazemore v. Davis*, App. D.C., 394 A.2d 1377 (1978).

Custody between unmarried parents. — Although this section and § 16-911 are not directly applicable to actions between two parents who were never married to each other, the statutes applicable to custody awards to married people should be examined as representing the legislature's considered weighing of the competing rights among the parents of a child and the child regarding the assignment of the child's custody. *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

Guided by the best interest of the child, the court applied the same criteria to the award of custody to unmarried parents, where both parents have actively participated in the upbringing of the child. *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

In applying the new statutory considerations when making joint custody awards to unmarried parents, discretion should include recognizing that the fact that the parents are not married may have a bearing in the consideration of individual factors. *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

Custody factors properly evaluated. — Neither the court's oral ruling nor its written findings of fact and conclusions of law indicated that it had improperly accorded presumptive significance to the factors of motherhood and physical possession of a child in determining the question of future custody. *Moore v. Moore*, App. D.C., 391 A.2d 762 (1978).

Authority to order reimbursement of costs and fees in custody case. — Where the court finds that the interests of the children are best served by giving their mother legal custody, the court is authorized to order that she be reimbursed for the court costs and attorney's fees which she incurred in order to regain custody. *Eisenberg v. Eisenberg*, App. D.C., 357 A.2d 396 (1976).

Modification of final orders. — Generally, once a court issues a final order, the policy of finality disfavors a revisitation to that order. However, an order emanating from a divorce settlement does not fall within the general rule, for the law specifically provides that the trial court may modify such orders as necessary. *Smith v. Smith*, App. D.C., 673 A.2d 1281 (1996).

Modification of alimony. — It may be appropriate for the trial court to award increased alimony when only the income of the paying spouse, and not the needs of the receiving spouse, have increased. This is a matter for the trial court, marshalling the facts pursuant to correct legal standards. *Graham v. Graham*, App. D.C., 597 A.2d 355 (1991).

Modification of separation agreements. — A trial court may modify a separation agreement which is incorporated but not merged into a divorce decree, but the authority to do so is limited. Such modification requires a showing that a substantial and material change in circumstances, unforeseen at the time the agreement was signed, has occurred. *Swift v. Swift*, App. D.C., 566 A.2d 1045 (1989).

Decline in wife's health, which was not unforeseen when property settlement agreement was signed, was not a ground for modification of the agreement. *Swift v. Swift*, App. D.C., 566 A.2d 1045 (1989).

Nonmonetary contributions. — While a trial judge should generally place a monetary value on the nonmonetary contributions, particularly when requested to do so and a formula is proposed, in the absence of any evidence in the record on appeal to suggest that the wife's contributions were anything other than "quite modest," requiring such a valuation would appear superfluous. *Ealey v. Ealey*, App. D.C., 596 A.2d 43 (1991).

Determining amount of attorney's fees. — Where a settlement agreement authorized

the court to grant reasonable attorney's fees, and the case law arising under statutory provisions established the standard for deciding what was reasonable, the fact that the court reached the same result by following the statutory provisions and the case law that it would have reached if it had followed the language of the settlement agreement rendered the technical error harmless. *King v. King*, App. D.C., 579 A.2d 659 (1990).

Findings unnecessary for issues not raised in court. — The absence of findings as to a party's ability to pay child support is not troublesome where the issue is not raised in the trial court. *Smith v. Smith*, App. D.C., 344 A.2d 221 (1975).

Abuse of discretion in awarding custody. — Where the trial court failed to give adequate consideration to statutorily mandated criteria in determining custody, the court abused its discretion in awarding custody. *Fitzgerald v. Fitzgerald*, App. D.C., 464 A.2d 110 (1983).

Attorney's fees incurred in attempts to collect alimony allowed. — The court can award attorney's fees which result from the time spent attempting to collect alimony after alimony has been granted. *Smith v. Smith*, App. D.C., 445 A.2d 666 (1982), cert. denied, 459 U.S. 1115, 103 S. Ct. 749, 74 L. Ed. 2d 968 (1983).

Cited in *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981); *Carter v. Carter*, App. D.C., 473 A.2d 395 (1984); *Clark v. Clark*, App. D.C., 485 A.2d 621 (1984); *In re Roe*, 114 WLR 753 (Super. Ct. 1986); *Shelton v. Bradley*, App. D.C., 526 A.2d 579 (1987); *Joel v. Joel*, App. D.C., 559 A.2d 769 (1989); *D.S. v. A.E.H.*, 117 WLR 2301 (Super. Ct. 1989); *In re J.A.*, App. D.C., 601 A.2d 69 (1991); *E.S. v. L.S.*, 122 WLR 573 (Super. Ct. 1994); *Prost v. Greene*, App. D.C., 675 A.2d 471 (1996).

§ 16-915. Change of name on divorce.

Upon divorce from the bond of marriage, the court shall, on request of a party who assumed a new name on marriage and desires to discontinue using it, state in the decree of divorce either the birth-given or other previous name which such person desires to use. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; 1973 Ed., § 16-915; Oct. 1, 1976, D.C. Law 1-87, § 18, 23 DCR 2544.)

Legislative history of Law 1-87. — See note to § 16-911.

Purpose and effect of section. — This section recognizes the common-law right of a married woman to change her name back to her maiden or previously used name and provides a mechanism by which the woman may exercise

her right at the time of divorce and record the name change without filing a separate action under § 16-2501 et seq. *Brown v. Brown*, App. D.C., 384 A.2d 632 (1977).

Trial court without discretion. — This section does not leave the decision of whether the divorce decree should authorize restoration of a prior name to the discretion of the trial

court. *Brown v. Brown*, App. D.C., 384 A.2d 632 (1977).

Cited in *Brown v. Brown*, App. D.C., 382 A.2d 1038 (1978).

§ 16-916. Maintenance of spouse and minor children; maintenance of former spouse; maintenance of minor children; enforcement.

(a) Whenever a husband or wife shall fail or refuse to maintain his or her needy spouse, minor children, or both, although able to do so, or whenever any parent shall fail or refuse to maintain his or her children by a marriage since dissolved, although able to do so, the court, upon proper application and upon a showing of genuine need of a spouse, may decree, pendente lite and permanently, that such husband or wife shall pay reasonable sums periodically for the support of such needy spouse and of the children, or such children, as the case may be, and the court may decree that he or she pay suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(b) Whenever a former spouse has obtained a foreign ex parte divorce, the court thereafter, on application of the other former spouse and with personal service of process upon such former spouse in the District of Columbia, may decree that he or she shall pay him or her reasonable sums periodically for his or her maintenance and for suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(c) When a father or mother fails to maintain his or her minor child, the Court may decree that the father or mother pay reasonable sums periodically for the support and maintenance of the child, that the parent obtain medical insurance for the child whenever that insurance is available at a reasonable cost, and that the father or mother pay Court costs, including counsel fees, to enable plaintiff to conduct the cases.

(d) The court may enforce any decree entered under this section in the same manner as is provided in section 16-911.

(e)(1) In order to secure payment of overdue support as defined in section 466(e) of the Social Security Act approved August 16, 1984 (98 Stat. 1306; 42 U.S.C. 666(e)), after providing notice under subsection (b) of this section, the Court shall, where appropriate, require the parent to post security, bond, or give some other guarantee.

(2) The Court shall provide advance notice to the parent regarding the delinquency of the support payment and the requirement of posting security, bond, or guarantee. The notice shall inform the parent of the parent's rights and the methods available for contesting the impending action.

(3) Where the Clerk of the Court determines that a parent is delinquent in child support payments in an amount equal to at least 60 days of child support payments, the Clerk of the Court shall notify the Mayor of the parent's name, social security number, court docket number, and the amount of the support payment delinquency.

(f) Any court order that establishes a retroactive amount of child support or a judgment for unreimbursed public assistance shall be established in accor-

dance with section 16-916.1 and shall take into consideration either the current earnings and income of the noncustodial parent at the time the order is set or the earnings and income of the noncustodial parent during the period for which retroactive child support or unreimbursed public assistance is sought. To overcome the presumptive support amount, the court may consider the obligor's ability to pay back support and concurrently maintain current payments. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 3; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(e)(2)(A); 1973 Ed., § 16-916; Oct. 1, 1976, D.C. Law 1-87, § 19(a) — (c), 23 DCR 2544; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(4), 33 DCR 6710; May 10, 1989, D.C. Law 7-231, § 24, 36 DCR 492; Mar. 16, 1995, D.C. Law 10-223, § 2(e), 41 DCR 8051; Feb. 13, 1996, D.C. Law 11-87, § 2, 42 DCR 6767.)

- I. General Consideration.
- II. Separate Maintenance.
- III. Child Support.
- IV. Modification of Orders.
- V. Enforcement.
- VI. Retroactive Support.
- VII. Attorney Fees.

I. GENERAL CONSIDERATION.

Cross references. — As to uniform child custody jurisdiction and marital or parent and child long-arm jurisdiction, see Chapter 45 of this title.

As to interception of District income tax refunds of individuals in arrears in court-ordered child support payments, see § 47-1812.11.

Section references. — This section is referred to in §§ 16-583, 30-501, and 30-507.

Effect of amendments. — D.C. Law 10-223 added (f).

D.C. Law 11-87 inserted (e)(3).

Legislative history of Law 1-87. — See note to § 16-911.

Legislative history of Law 6-166. — See note to § 16-924.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-223. — See note to § 16-909.

Legislative history of Law 11-87. — Law 11-87, the "Child Support Enforcement and Licensing Compliance Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-225, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-158 and transmitted to both Houses of Congress for its review. D.C. Law 11-87 became effective on February 13, 1996.

Mayor authorized to issue rules. — See note to § 16-909.2.

Jurisdiction. — A temporary restraining order which bars any withdrawal of funds from a bank is a sufficient seizure of the funds to give the court in rem jurisdiction. *Trigo v. Riggs Nat'l Bank*, App. D.C., 338 A.2d 445 (1975).

Once it attaches, jurisdiction remains throughout any subsequent proceedings to recover past due payments of alimony or support. *Richardson v. Richardson*, App. D.C., 276 A.2d 231 (1971).

Waiver of objection to personal service. — A father who voluntarily makes payments through the court pursuant to a support order, thereby consenting to the support order, clearly manifests his consent to the jurisdiction of the court and waives any objection to the failure of personal service. *Ausbrooks v. Ausbrooks*, App. D.C., 493 A.2d 324 (1985).

Forum non conveniens. — One of the "private interests" that should be considered in determining whether a motion to dismiss a complaint seeking separate maintenance for forum non conveniens should be granted, is the enforceability of a judgment once obtained; which factor weighs heavily against granting the forum non conveniens motion in a case where the ex-husband has a history of failure to make court-ordered payments to support his

children and the ex-husband's principal source of income comes from the District. *Creamer v. Creamer*, App. D.C., 482 A.2d 346 (1984).

Final order of court in foreign jurisdiction entitled to res judicata effect. — Final order of Maryland court terminating father's support obligations in accordance with the terms of a separation agreement was entitled to res judicata effect. *Rollins v. Rollins*, 118 WLR 2493 (Super. Ct. 1990).

No mens rea requirement in subsection (c). — "Fail" does not mean "knowingly fail," and accordingly, no mens rea requirement need be or should be implied in subsection (c). District of Columbia ex rel. *K.L.H. v. Duncan*, 117 WLR 21 (Super. Ct. 1989).

Court may order specific performance of support agreement. — Where the husband fails to explain why he cannot liquidate his personal assets or use them as collateral for a loan, the court may award specific performance of the support agreement which he signed. *Marlowe v. Marlowe*, App. D.C., 310 A.2d 59 (1973).

Right of party to appeal on ground that award inadequate. — Where the husband does not question his wife's right to support or contend that she should be awarded a lesser amount, the wife, by accepting monthly support payments from her husband, is not precluded from appealing on the ground that the award is inadequate. *Tennyson v. Tennyson*, App. D.C., 263 A.2d 643 (1970).

Cited in *Lattisaw v. Lattisaw*, 359 F.2d 258 (D.C. Cir. 1966); *Cowles v. Cowles*, App. D.C., 263 A.2d 658 (1970); *Lewis v. Lewis*, App. D.C., 300 A.2d 720 (1973); *Eisenberg v. Eisenberg*, App. D.C., 357 A.2d 396 (1976); *Devoto v. Devoto*, App. D.C., 358 A.2d 312 (1976); *Johnson v. Young*, App. D.C., 372 A.2d 992 (1977); *Fox v. Fox*, 110 WLR 1097 (Super. Ct. 1982); *Rittenhouse v. Rittenhouse*, App. D.C., 461 A.2d 465 (1983); District of Columbia ex rel. *W.J.D. v. E.M.*, App. D.C., 467 A.2d 457 (1983); *Padgett v. Padgett*, App. D.C., 478 A.2d 1098 (1984); *Williams v. Williams*, App. D.C., 495 A.2d 754 (1985); *Nelson v. Nelson*, 114 WLR 2437 (Super. Ct. 1986); *Haymon v. Wilkerson*, App. D.C., 535 A.2d 880 (1987); *Nelson v. Nelson*, App. D.C., 548 A.2d 109 (1988); *Murdock v. Huguley*, 117 WLR 613 (Super. Ct. 1989); *Brown v. United States*, App. D.C., 579 A.2d 1158 (1990); *Rollins v. Rollins*, App. D.C., 602 A.2d 1121 (1992); *L.A.W. v. M.E.*, App. D.C., 606 A.2d 160 (1992).

II. SEPARATE MAINTENANCE.

Factors considered in award of maintenance. — The wife's own financial resources constitute 1 factor among several which the trier of fact must evaluate in determining the amount of maintenance, if any, which will be

required of a husband. *Skiff v. Skiff*, App. D.C., 277 A.2d 284 (1971).

Certain primary factors, such as the duration of the marriage, the ages and health of the parties, their respective financial positions, both past and prospective, the wife's contribution to family support and property ownership, the needs of the wife and the husband's ability to contribute thereto, and the interest of society generally in preventing the wife from becoming a public charge, must be considered in determining whether to award maintenance to the wife and the amount of any such award. *Tibbs v. Tibbs*, App. D.C., 223 A.2d 279 (1966); *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

Ability to pay forms basis for award. — In an action for separate maintenance, it is sufficient if the court satisfies itself from the sum total of evidence that the husband has ability to maintain his wife and children in a manner comparable to the standard of living to which the parties were accustomed at the time of separation, and has refused to do so. *Cefaratti v. Cefaratti*, App. D.C., 315 A.2d 142 (1974).

Discretion of court. — Award of separate maintenance is matter within broad discretion of trial court and will not be disturbed on appeal except upon a clear showing of abuse. *Green v. Green*, App. D.C., 217 A.2d 658 (1966).

Broad discretion is vested in the trial judge in awarding maintenance and in fixing amount thereof, based on various factors, and his determination on this matter will not be disturbed except upon a clear showing of abuse of discretion. *Lewis v. Lewis*, App. D.C., 206 A.2d 266 (1965).

Domicile. — Section does not require one who seeks maintenance to be domiciled in District. *Skiff v. Skiff*, App. D.C., 277 A.2d 284 (1971); *Brown v. Dyer*, App. D.C., 489 A.2d 1081 (1985).

Debts. — Individual creditor has cause of action for debts incurred by wife after separation and before the filing of a complaint for separate maintenance, and the divorce decree is not objectionable for not ordering the husband to assume such debts. *King v. King*, App. D.C., 286 A.2d 234 (1972).

Mortgage payments. — Mortgage payments on the marital abode in which the wife still lives may constitute maintenance. *Smith v. Smith*, App. D.C., 256 A.2d 833 (1969).

Payment of income tax. — Party may not be required to pay his spouse's income tax where there is no record of the extent of the estate or of the tax liability and the spouse is granted a rather liberal monthly award for maintenance. *Foer v. Foer*, App. D.C., 297 A.2d 339 (1972).

Desertion bars claim. — When the wife leaves her husband and marital abode without just cause, such desertion bars her claim for

separate maintenance, although she can still be awarded counsel fees. *Lee v. Lee*, 267 A.2d 824 (1970); *Roberson v. Roberson*, App. D.C., 297 A.2d 769 (1972).

Standard of proof for adultery. — Standard of proof for adultery in a separate maintenance action is no less than that in a divorce action. *Snyder v. Snyder*, App. D.C., 222 A.2d 850 (1966).

Acceptance of adulterous conduct. — An award of separate maintenance based on adultery cannot stand where the injured party claims that she is living apart because her husband had left against her will and testifies as to her willingness to overlook his conduct. *Snyder v. Snyder*, App. D.C., 222 A.2d 850 (1966).

Contempt. — Where a party does not demonstrate any valid legal basis for nonpayment, the original judgment for separate maintenance is sufficient to support a finding that he still has the ability to make support payments and that he is in contempt for failure to do so. *Wines v. Wines*, App. D.C., 291 A.2d 180 (1972).

A finding that the husband had wilfully disobeyed a separate maintenance order is sufficient to support an adjudication of contempt. *Cefaratti v. Cefaratti*, App. D.C., 315 A.2d 142 (1974).

Separation agreements. — A party is precluded from seeking support in excess of that provided by a separation agreement. *Foley v. Foley*, App. D.C., 336 A.2d 549 (1975).

The fact that a party's financial circumstances change for the worse since the execution of a separation agreement does not justify a modification of its provisions, in the absence of overreaching, fraud, duress or concealment. *Lanahan v. Nevius*, App. D.C., 317 A.2d 521 (1974).

Support order incorporated in separation agreement not abrogated by subsequent divorce decree. — Where the parties agree that a support order will remain in force and incorporate that order in a separation agreement, a subsequent divorce decree does not abrogate the order, which continues in force except as modified by a subsequent order. *Foley v. Foley*, App. D.C., 336 A.2d 549 (1975).

Validity of voidable support orders. — Although the trial court may have erred in entering a support order greater in scope than the support obligation under the parties' separation agreement (although no one specifically called the agreement to the court's attention) and to that extent issued a voidable order, the court did not act beyond its power and the defendant was not justified in complying with the parties' separation agreement in violation of the unchallenged support order. *Kammerman v. Kammerman*, App. D.C., 543 A.2d 794 (1988).

III. CHILD SUPPORT.

Discretion of court. — The court lacks discretion under subsection (c) to decline to order any child support where there is a showing of the respondent's duty and present ability to pay, and of a previous failure to pay. *District of Columbia ex rel. K.L.H. v. Duncan*, 117 WLR 21 (Super. Ct. 1989).

Support obligation. — The obligation to support minor children is shared by both parents, and applies to children born out of wedlock as well as children born in wedlock. *W.M. v. D.S.C.*, App. D.C., 591 A.2d 837 (1991).

To the extent possible, a child's parents are primarily responsible for his or her support, not the District of Columbia. *E.K. v. C.S.*, 119 WLR 2273 (Super. Ct. 1991).

Person is "child" until age 21 for purpose of support. — Section 30-401 provides that notwithstanding other provisions of the D.C. Code making a person an adult at age 18, for purposes of child support, a person is considered a child until age 21. *Butler v. Butler*, App. D.C., 496 A.2d 621 (1985).

Child support obligations in the District of Columbia continue until age 21. *Butler v. Butler*, App. D.C., 496 A.2d 621 (1985).

Support not required after age of majority. — Since this section speaks only of "minor" children, the court has no power to require the support of any child after that child reaches the age of majority. *Norris v. Norris*, App. D.C., 473 A.2d 380 (1984).

Father is under no duty to support his son after he turns 21 where he is able to take care of himself. *Nelson v. Nelson*, App. D.C., 379 A.2d 713 (1977).

Children born out of wedlock. — A child born in wedlock may receive, at the court's discretion, pendente lite support, and it necessarily follows that a child born out of wedlock may receive comparable support. *W.M. v. D.S.C.*, App. D.C., 591 A.2d 837 (1991).

Adoption. — Adoption is the express means by which a non-biological parent may acquire the formal and permanent status of parent. *K.A.T. v. C.A.B.*, App. D.C., 645 A.2d 570 (1994).

Conflict of Child Support Guidelines with existing law. — The Superior Court had authority to promulgate Child Support Guidelines as a Court rule, but the guideline that was established conflicted with existing law, and was therefore invalid. *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989) [decision prior to enactment of § 16-916.1. See *A.S. v. District of Columbia ex rel. B.R.*, App. D.C., 593 A.2d 646 (1991)].

Ability to pay. — Father's duty to support his needy children is commensurate with his ability to do so. *Wright v. Wright*, App. D.C., 386 A.2d 1191 (1978).

An award of child support is a matter com-

mitted to the court's discretion to consider the father's welfare and his financial ability to pay. *Roberson v. Roberson*, App. D.C., 297 A.2d 769 (1972).

Harsh support order. — Child support order may not be used to penalize errant father through the imposition of harsh financial terms. *Wright v. Wright*, App. D.C., 386 A.2d 1191 (1978).

Father's receipt of substantial personal injury award. — It was appropriate to depart from the Child Support Guideline based solely on the defendant's current gross wages, where the defendant received a substantial judgment award for a personal injury and thus had the available resources, and the fact that he had not provided significant support to his child in the past. *Bethel v. Bethel*, 119 WLR 885 (Super. Ct. 1991).

Behavior of custodial parent. — Child support is right which belongs to child; for this reason, any dereliction or misconduct on the part of the custodial parent has no significance in determining the right of the child to support from the non-custodial parent. *Burnette v. Void*, App. D.C., 509 A.2d 606 (1986).

The absence of clean hands on the part of a custodial parent is not a bar to a request by the parent, on behalf of a minor child, for a court-ordered increase in child support. *Burnette v. Void*, App. D.C., 509 A.2d 606 (1986).

Contempt. — In making the determination of civil contempt for failure to make support payments, the trial court considers all the circumstances of the case, including whether the defendant's asserted inability to pay is due to involuntary financial straits or a voluntary decision to reduce his or her income. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

IV. MODIFICATION OF ORDERS.

Date of modification. — Court may prospectively increase or decrease support obligation as of the date when the moving party applied for the modification. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Increase in noncustodial parent's ability to pay child support. — An increase in the noncustodial parent's ability to pay can, by itself, constitute a material change in circumstances sufficient to justify an increase in support. *Graham v. Graham*, App. D.C., 597 A.2d 355 (1991).

Changes in circumstances must be detailed. — Changes in circumstances as grounds for modification of child support must be detailed in order to prevent relitigation of facts and issues in the future. *Tennyson v. Tennyson*, App. D.C., 381 A.2d 264 (1977).

Relitigation of facts permitted. — Where a modification of child support is sought, the original evidentiary facts may be relitigated,

provided that they were presented to the court originally. *Tennyson v. Tennyson*, App. D.C., 381 A.2d 264 (1977).

Modification of order inadequate in inception. — If parent seeking modification successfully bears the burden of showing that the separation agreement established a child support arrangement which in its inception was inadequate to meet the children's foreseeable needs, the trial court, as *parens patriae*, has both the power and the responsibility to order additional child support. *Portlock v. Portlock*, App. D.C., 518 A.2d 116 (1986).

Modification of order following spouse's foreign ex parte divorce. — When a spouse files a complaint seeking permanent maintenance under this section, and later seeks a modification of the Family Division's order after a court in another jurisdiction has awarded the other spouse an ex parte divorce, the Family Division may grant relief under subsection (b) as long as the notice requirements of subsection (b) are met. There is no need for the petitioning former spouse to file a second complaint. *Creamer v. Creamer*, App. D.C., 482 A.2d 346 (1984).

Standard for modifying support under separation agreement not altered by URESA order. — The standard for modifying a child support provision in a voluntary separation agreement (i.e., that the party seeking modification shows a change in circumstances unforeseen at the time the agreement is entered and that the change is both substantial and material to the welfare and best interests of the children), is not altered by a subsequent Uniform Reciprocal Enforcement of Support Act order. *Albus v. Albus*, App. D.C., 503 A.2d 1229 (1986).

Modification of original support order unjustified. — Where the trial court did not find a change in either the needs of the children or the ability of the parents to provide for those needs which would justify an increase in the father's obligation of support, modification of the court's original order was not justified. *Wright v. Wright*, App. D.C., 386 A.2d 1191 (1978).

V. ENFORCEMENT.

Accrued, unpaid support installments are collectible debts. — When a person fails to make support payments due under a court order, each accrued, unpaid installment becomes a collectible debt. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

The obligee's right to accrued but unpaid installments of a pendente lite support award, is absolute and vested, that the order creating that right is sufficiently final to be enforceable. The obligor is protected by the same finality.

Soto v. Gonzalez, 120 WLR 194 (Super. Ct. 1992).

Support arrearages under consent order. — Like support arrearages under a divorce decree, support arrearages under a consent order ripen into money judgments as they become due and payable; each arrearage becomes a separate judgment as of the day payment falls due and the life of each judgment is 12 years. *Padgett v. Padgett*, App. D.C., 472 A.2d 849 (1984).

Laches. — Laches is viable defense in actions for support arrearages under a consent order where the arrearages have ripened into money judgments. *Padgett v. Padgett*, App. D.C., 472 A.2d 849 (1984).

Default judgment where no defense offered. — Where a putative father fails to plead or otherwise offer a defense in an action against him for maintenance, the mother is entitled to judgment by default. *Taylor v. Johnson*, App. D.C., 262 A.2d 803 (1970).

Burden of proof. — Burden is on the non-paying party to show a reasonable excuse for nonperformance, and when he offers no valid reason for default, the court has the right to enforce compliance by imprisonment unless he should purge himself of the arrears. *Truslow v. Truslow*, App. D.C., 212 A.2d 763 (1965).

When faced with a motion for contempt establishing noncompliance with a support order, the defendant bears the burden of showing an inability to pay or some other excuse for failure to comply. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Wage assignment. — When a party is in arrears on one type of court-ordered payment (e.g., child support), the court may order a wage assignment under § 16-911(a)(4) not only as to that type of payment but also as to any other type which the court may require under this section (e.g., attorney's fees). *Martin v. Tate*, App. D.C., 492 A.2d 270 (1985).

Incarceration. — Omission of finding on ability to pay invalidates any commitment to jail as a means of enforcing support. *Truslow v. Truslow*, App. D.C., 212 A.2d 763 (1965).

VI. RETROACTIVE SUPPORT.

Scope of retroactive payments. — Whenever a court concludes that a parent's support payments should be made retroactive to the child's birth, the amount of those payments should be limited to a fair share of only those expenses that were actually made by the other

parent, and only those expenses that the court deems to have been reasonable. *J.A.W. v. D.M.E.*, App. D.C., 591 A.2d 844 (1991).

Burden of proof. — A retroactive award of child support going back to the child's birth should be the rule rather than the exception, and the burden of persuasion is on the party opposing such an award to demonstrate to the court why an award of child support should not be retroactive to the birth of the child. *J.A.W. v. D.M.E.*, App. D.C., 591 A.2d 844 (1991).

No retroactive modification of past-due support payments. — The court may not retroactively modify the sum owing from accumulated, past-due support payments, even though the family has not formally reduced the debt to a money judgment. *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981).

Paternity actions. — In a paternity action a trial court can award child support retroactively to the child's birth upon a finding or an admission of paternity. *J.A.W. v. D.M.E.*, App. D.C., 591 A.2d 844 (1991).

Children born out of wedlock. — In cases involving children born out of wedlock, trial judges in their discretion may award support retroactive at least to the time a support petition is served. *Cyrus v. Mondesir*, App. D.C., 515 A.2d 736 (1986).

VII. ATTORNEY FEES.

Authority of court. — The court may decree that a parent pay reasonable sums periodically for the support and maintenance of the child, including counsel fees, to enable plaintiff to conduct cases. *Harris v. Harris*, 119 WLR 665 (Super. Ct. 1991).

Application of provision awarding attorneys' fees under subsection (c) is not restricted to proceedings involved in establishing initial support obligation. *Cole v. Kinley*, 118 WLR 1001 (Super. Ct. 1990).

Paternity actions. — In paternity suits that include claims for child support, subsection (c) authorizes the trial court to award attorney's fees. *J.A.W. v. D.M.E.*, App. D.C., 591 A.2d 844 (1991).

Good faith misinterpretation of agreement. — Award of attorney fees is proper where father fails to maintain his children, notwithstanding the fact that he may base his refusal on a good faith misinterpretation of the separation agreement. *McGehee v. Maxfield*, App. D.C., 256 A.2d 576 (1969).

§ 16-916.1. Child Support Guideline.

(a) In any case brought under paragraph (1), (3), (10), or (11) of section 11-1101 that involves the establishment or enforcement of child support, or in

any case that seeks to modify an existing child support order, if the judicial officer finds that there is an existing duty of child support, the judicial officer shall conduct a hearing on child support, make a finding, and enter a judgment in accordance with the child support guideline (“guideline”) established in this section.

(b) The guideline shall be based on the following principles:

(1) The guideline shall set forth an equitable approach to child support in which both parents share legal responsibility for the support of the child.

(2) The subsistence needs of each parent shall be taken into account in the determination of child support.

(3) A parent has the responsibility to meet the child’s basic needs as well as to provide additional child support above the basic needs level. The relative standard of living of each household shall be considered in the child support award, and a child shall not bear a disproportionate share of the economic consequences of the existence of 2 households rather than 1. When child support is established, the child shall not live at a standard substantially below that of the noncustodial parent.

(4) Application of the guideline shall be gender neutral.

(5) The guideline shall take into consideration the existence of a prior child support order that is being paid by a parent or the obligation of a parent to support a dependent child who lives in the parent’s household.

(6) The guideline shall take into account the difference in cost to raise children of different ages.

(7) The guideline shall be applied consistently whether or not the custodial parent is an Aid to Families with Dependent Children (“AFDC”) recipient.

(8) The guideline shall be applied presumptively.

(c) For purposes of this section, the term “gross income” means income from any source, including, but not limited to:

(1) Salary or wages, including overtime, tips, or income from self-employment;

(2) Commissions;

(3) Severance pay;

(4) Royalties;

(5) Bonuses;

(6) Interest or dividends;

(7) Income derived from a business or partnership after deduction of reasonable and necessary business expenses, but not depreciation;

(8) Social Security;

(9) Veteran’s benefits;

(10) Insurance benefits;

(11) Worker’s compensation;

(12) Unemployment compensation;

(13) Pension;

(14) Annuity;

(15) Income from a trust;

(16) Capital gains from a real or personal property transaction, if the capital gains represent a regular source of income;

(17) Spousal support received from a person who is not a party to the child support order;

(18) A contract that results in regular income;

(19) A perquisite or in-kind compensation if the perquisite or in-kind compensation is significant and represents a regular source of income or reduces living expenses, such as use of a company car or reimbursed meals;

(20) Income from life insurance or an endowment contract;

(21) Regular income from an interest in an estate, directly or through a trust;

(22) Lottery or gambling winnings that are received in a lump sum or in an annuity;

(23) Prize or award; or

(24) Net rental income after deduction of reasonable and necessary operating costs, but not depreciation.

(d) A prior child support order that is being paid shall be deducted from a parent's income before the child support obligation is computed in the instant case.

(e)(1) The guideline shall have 5 income levels with a different percentage applied at each level.

(2) In level 1, a noncustodial parent with income of \$7,500 or below shall be considered unable to contribute the guideline percentage. A noncustodial parent with gross income below \$7,500 shall be treated on an individual basis and, in nearly all cases, shall be ordered to pay at least a nominal sum of \$50 per month. If the individual circumstances permit, a noncustodial parent with an income below \$7,500 shall be ordered to contribute more.

(3) In level 2, a noncustodial parent with income that is not less than \$7,501 and not more than \$15,000 per year, and whose income with application of the guideline will not be below the poverty level, shall contribute the following percentage of income for basic child support:

One child	20%
Two children	26%
Three children	30%
Four or more children	32%

(4) In level 3, a noncustodial parent with income that is not less than \$15,001 and not more than \$25,000 per year, and whose income with application of the guideline will not be below the poverty level, shall contribute the following percentage of income for basic child support:

One child	21%
Two children	27%
Three children	31%
Four or more children	33%

(5) In level 4, a noncustodial parent with income that is not less than \$25,001 and not more than \$50,000 per year shall contribute the following percentage of income for basic child support:

One child	22%
Two children	28%

Three children	32%
Four or more children	34%

(6) In level 5, a noncustodial parent with income that is not less than \$50,001 and not more than \$75,000 per year shall contribute the following percentage of income for basic child support:

One child	23%
Two children	29%
Three children	33%
Four or more children	35%

(7) In level 2, 3, 4, or 5, the child support percentage for older children shall be adjusted in accordance with this section. Further adjustments to offset medical insurance cost or income of the custodial parent shall be provided in accordance with this section.

(f) The guideline percentage shall not apply presumptively to a noncustodial parent with income that exceeds \$75,000. The amount available to a child of a noncustodial parent with income above \$75,000 shall not be less than the amount that would have been ordered if the guideline had been applied to a noncustodial parent with income of \$75,000.

(g) The basic child support order amount of the guideline is for a child 6 years of age or younger. The basic child support order shall be increased by 10% if the oldest child is not less than 7 years of age and not older than 12 years of age. The basic child support order shall be increased by 15% if the oldest child is not less than 13 years of age and not more than 21 years of age. For purposes of this subsection, the age of the oldest child shall be used for the computation of the entire child support order amount rather than to compute a separate amount for each child.

(h)(1) An offset from the child support order amount shall be allowed for the child's portion of a medical insurance premium if the noncustodial parent adds or has already added the child to the noncustodial parent's current medical insurance policy and the conditions described in this subsection are met. The offset shall be determined by the subtraction from the noncustodial parent's gross income of the amount of the premium attributable to coverage for the child measured on a per capita basis.

(2) The noncustodial parent shall present proof of the increase in a medical insurance premium incurred as a result of the addition of the child to the medical insurance policy. The proof provided shall identify clearly that the source of the increase of the medical insurance premium is the child who is the subject of the child support order. The cost shall be reasonable.

(3) If a noncustodial parent does not have medical insurance coverage, does not have a second family, and can obtain medical insurance coverage at a reasonable cost, the court may order the noncustodial parent to obtain medical insurance coverage for the child in accordance with federal law. The amount of the offset shall equal the difference between the premium for single coverage and the premium for family coverage. No offset shall be calculated by using the cost for the coverage for the noncustodial parent.

(4) If the noncustodial parent has family medical insurance coverage in the noncustodial parent's medical plan for a second family, the addition of the child who is the subject of the child support order need not result in an

additional cost of medical insurance coverage to the parent. The noncustodial parent shall be required to provide proof that the child has been added to the medical insurance coverage and to provide a medical insurance card to the custodial parent. An offset shall not be given if there is no additional cost of medical insurance coverage to the noncustodial parent.

(i) The payment of an uninsured extraordinary medical or dental expense incurred by a minor child who is the subject of a child support petition shall be treated on a case by case basis, absent an agreement between the parties. If the court determines that the medical or dental expense is necessary and is in the best interest of the child, the court may reduce the child support order of the noncustodial parent for a portion of the payment that the noncustodial parent makes toward the medical or dental expense or may increase the child support order to reimburse the custodial parent for payments made by the custodial parent.

(j) The percentage of the noncustodial parent's gross income shall be reduced by a percentage that corresponds to the custodial parent's share of total parental gross income. The reduction shall be determined according to the following formula:

(1) Gross income of the custodial parent minus the appropriate threshold amount provided for in paragraph 2 of this subsection and day-care cost divided by gross income of the noncustodial parent plus the custodial parent's gross income minus appropriate threshold amount and child care costs.

(2) The threshold amount to be used to apply the offset, and below which the custodial parent's income shall be disregarded, shall be \$16,500 gross income if there is 1 child. For each additional child, the threshold amount to be used to apply the offset shall increase by \$2,000.

(k)(1) If the parties present a consent order, an agreement that is to become an order, or a written agreement that is to be merged in an order, the judicial officer shall examine the child support provisions of the agreement, and compare the child support provisions to the guideline. If the amount of child support agreed upon is outside of the range of child support that would be ordered presumptively upon application of the guideline, the judicial officer shall determine if the agreed upon level of child support is fair and just. If the parties are represented by counsel, the judicial officer shall inquire whether the attorney informed the clients of the guideline. If the clients have not been informed of the guideline, the judicial officer shall advise the attorneys to do so. If a party is not represented by an attorney, the judicial officer shall ensure that the party is aware of the child support amount that the court would order presumptively pursuant to the guideline.

(2) The propriety of any deviation from the guideline shall be justified in writing with a statement of the factors that form the basis for the judicial officer's finding that the deviation is fair and just. A transcript filed in the jacket shall suffice as a writing.

(l) Application of the guideline shall be presumptive. The guideline shall be applied unless application of the guideline would be unjust or inappropriate in the circumstances of the particular case. Departures shall be set forth and

explained in writing. The factors that may be considered to overcome the presumption are:

(1) The needs of the child are exceptional and require more than average expenditures;

(2) The gross income of the noncustodial parent is substantially less than that of the custodial parent;

(3) A property settlement provides resources readily available for the support of the child in an amount at least equivalent to the formula amount;

(4) The noncustodial parent supports a dependent other than the child for whom the custodial parent receives credit in the formula calculation, and application of the guideline would result in extraordinary hardship;

(5) The noncustodial parent needs a temporary period of reduced child support payment to permit the repayment of a debt or rearrangement of his or her financial obligations; a temporary reduction may be included in a child support order if:

(A) The debt or obligation is for a necessary expenditure of reasonable cost in light of the the noncustodial parent's family responsibilities;

(B) The time of the reduction does not exceed 12 months; and

(C) The child support order includes the amount that is to be paid at the end of the reduction period and the date that the higher payments are to commence;

(6) The custodial parent provides medical insurance coverage for the child at an additional cost to the custodial parent's medical insurance coverage and the additional cost is significant in relation to the amount of child support prescribed by the guideline;

(7) Children of more than 1 noncustodial parent live in the custodial parent's household, receive a child support payment from the noncustodial parent, and the resulting gross income for the custodial parent and the children in the household causes the standard of living of the children to be greater than that of the noncustodial parent; or

(8) Any other exceptional circumstance that would yield a patently unfair result.

(m) The formula established in subsection (q) of this section incorporates a variation of plus or minus 3% for each level. A variation within the plus or minus 3% limit need not be justified by written findings but specific findings are advisable. The factfinder shall consider at least the following factors in the application of a variation:

(1) A child has regular and substantial income that can be used for child support without impairment of the child's current or future education;

(2) The noncustodial parent has special needs that require additional subsistence cost;

(3) The noncustodial parent pays for certain expensive necessities for the child, such as tuition or orthodontia;

(4) The child has moderately more than average needs;

(5) High child care costs are involved; or

(6) There is no medical insurance coverage, medical insurance coverage does not cover dental or major medical items, or the medical insurance

coverage has a high deductible, and the expenses are paid or are to be paid by the custodial parent.

(n) In a case in which shared custody is ordered or agreed to and the child spends 40% or more of the child's time with each parent, the guideline shall not apply presumptively. For the purposes of this subsection, "shared custody" means actual visitation that exceeds 40% of the year. The guideline shall be considered advisory, and if, in the discretion of the judicial officer, application of the guideline would result in an unjust or inappropriate order in a particular circumstance, the following procedure shall be considered:

(1)(A) Calculate the amount that the father would pay the mother if the mother has sole custody, and multiply the amount by 1.5.

(B) Calculate the amount that the mother would pay the father if the father has sole custody, and multiply the amount by 1.5.

(2)(A) Multiply the father's obligation by the percentage of the time the mother has the child.

(B) Multiply the mother's obligation by the percentage of the time the father has the child.

(3) The difference between the amounts of paragraphs (2)(A) and (2)(B) of this subsection shall be the net transfer.

(4) Apply any necessary credit or debit. For example, if 1 parent pays all the day-care expense, he or she shall be entitled to a credit for the day-care expense attributable to the days the child is with the other parent.

(o) A child support order issued under this section or section 5 of the District of Columbia Child Support Enforcement Amendment Act of 1985, effective February 24, 1987 (D.C. Law 6-166; D.C. Code, 30-504), shall be subject to modification by application of the guideline subject to the following conditions or limitations:

(1) A party to a child support proceeding shall exchange relevant information on finances or dependents every 3 years and shall be encouraged to update a child support order voluntarily using the updated information and the guideline. Relevant information is any information that is used to compute child support pursuant to the guideline.

(2) Every 3 years, in cases being enforced under Part D of Title IV of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. sec. 651 *et seq.*) ("IV-D program"), the Department of Human Services Office of Paternity and Child Support Enforcement and the Child Support Section of the Civil Division of the Office of the Corporation Counsel shall notify both the noncustodial and the custodial parent of the right to seek a modification of their child support order under the guidelines. The Department of Human Services Office of Paternity and Child Support Enforcement and the Child Support Section of the Civil Division of the Office of the Corporation Counsel shall establish a procedure for informing the noncustodial and custodial parent if a modification is warranted under the guideline.

(3) There shall be a presumption that there has been a substantial or material change of circumstances that warrants a modification of a child support order if application of the guideline to the current circumstances of the parties results in an amount of child support that varies from the amount of

the existing child support order by 15% or more. A child support order shall not be modified based solely on the enactment of the guideline. The presumption may be rebutted by:

(A) Proof of special circumstances such as a circumstance that would take a case outside the guideline; or

(B) Proof of substantial reliance on the original child support order issued prior to adoption of the guideline, and that application of the guideline, would yield a patently unjust result.

(4) The central figure stated in the guideline shall be used to compute the amount of child support that the guideline would yield for modification and to apply the test for the presumption.

(5) If a child support order is issued after September 27, 1987, and the child support order is outside the guideline, by order of the court or by merged agreement of the parties, the presumption shall not apply within 1 year of the issuance of the child support order.

(6) If a petition to modify a child support order pursuant to this section is accompanied by an affidavit that sets forth sufficient facts and guideline calculations, and is accompanied by proof of service upon the respondent, the Family Division may enter an order to modify the child support order in accordance with the guideline unless a party requests a hearing within 30 days of service of the petition for modification. No order shall be modified without a hearing if a hearing is timely requested.

(7) Notwithstanding paragraphs (3) through (6) of this subsection, a party may submit a praecipe with a certification of waiver and supporting documentation, as prescribed by the court, to modify the child support amount by agreement of the parties at any time. This agreement shall be treated and reviewed by the court for issuance of a revised decree in the same manner as an original agreement of the parties is reviewed.

(8) The judicial officer shall state the reasons for a departure from the guideline in writing. A transcript filed in the jacket shall suffice as a writing.

(9) Notwithstanding paragraph (3)(B) of this subsection, if a new child is born to the custodial and noncustodial parent, the guideline shall be applied to the entire family and 1 order shall be issued for all the children in the family. If possible, the 2 cases shall be consolidated if the child support of the last child is petitioned as a separate case.

(10) Nothing in this subsection shall preclude a party from moving to modify a child support order at any other time.

(p)(1) If a custodial parent has custody of children of more than 1 noncustodial parent, the judicial officer shall determine the standard of living of the custodial and noncustodial households. Standard of living is measured by dividing the gross income available to the household from all sources by the poverty level income (Chart 5) for the number of adults contributing income to the household, plus the number of children. If the standard of living for the custodial household is larger than the standard of living of the noncustodial household, the departure principle pursuant to subsection (1)(7) of this section may apply.

(2) If the noncustodial parent has other children living with him or her, the guideline shall be determined as follows:

(A) The guideline amount shall be determined for all of the children who live with the noncustodial parent and with the custodial parent for whom the noncustodial parent is responsible, except any child who is already the subject of a child support order.

(B) A per capita share of the guideline amount for a child who lives in the noncustodial parent's household shall be subtracted from the noncustodial parent's gross income. The remaining income shall be used as the noncustodial parent's gross income to calculate child support for a child before the court.

(3) If the judicial officer determines that the presumption has been overcome, the amount of child support ordered shall not reduce the standard of living of the child to less than that of the noncustodial parent. The precise amount of child support ordered is within the discretion of the judicial officer.

(q) The guideline percentages are established as follows:

CHART 1
CHILD SUPPORT ORDER FORMULA
FOR THE SUPERIOR COURT
ONE CHILD
AGES 0—6

ANNUAL GROSS INCOME OF NONCUSTODIAL PARENT	CHILD SUPPORT ORDER
0 — \$7,500	Discretion — Minimum \$50/month
\$7,501 — 15,000	20% of Gross Income
15,001 — 25,000	21% of Gross Income
25,001 — 50,000	22% of Gross Income
50,001 — 75,000	23% of Gross Income

AGES 7—12

ANNUAL GROSS INCOME OF NONCUSTODIAL PARENT	CHILD SUPPORT ORDER
0 — \$7,500	Discretion — Minimum \$50/month
\$7,501 — 15,000	20% of Gross Income + 10% of Basic Order (22%)
15,001 — 25,000	21% of Gross Income + 10% of Basic Order (23.1%)
25,001 — 50,000	22% of Gross Income + 10% of Basic Order (24.2%)
50,001 — 75,000	23% of Gross Income + 10% of Basic Order (25.3%)

AGES 13—21

ANNUAL GROSS
INCOME OF
NONCUSTODIAL
PARENT

CHILD SUPPORT
ORDER

0 — \$7,500
\$7,501 — 15,000
15,001 — 25,000
25,001 — 50,000
50,001 — 75,000

Discretion — Minimum \$50/month
20% of Gross Income + 15% of Basic Order (23%)
21% of Gross Income + 15% of Basic Order (24.15%)
22% of Gross Income + 15% of Basic Order (25.3%)
23% of Gross Income + 15% of Basic Order (26.45%)

CHART 2
CHILD SUPPORT ORDER FORMULA
FOR THE SUPERIOR COURT
TWO CHILDREN
AGES 0—6 (oldest child)

ANNUAL GROSS
INCOME OF
NONCUSTODIAL
PARENT

CHILD SUPPORT
ORDER

0 — \$7,500
\$7,501 — 15,000
15,001 — 25,000
25,001 — 50,000
50,001 — 75,000

Discretion — Minimum \$50/month
26% of Gross Income
27% of Gross Income
28% of Gross Income
29% of Gross Income

AGES 7—12 (oldest child)

ANNUAL GROSS
INCOME OF
NONCUSTODIAL
PARENT

CHILD SUPPORT
ORDER

0 — \$7,500
\$7,501 — 15,000
15,001 — 25,000
25,001 — 50,000
50,001 — 75,000

Discretion — Minimum \$50/month
26% of Gross Income + 10% of Basic Order (28.6%)
27% of Gross Income + 10% of Basic Order (29.7%)
28% of Gross Income + 10% of Basic Order (30.8%)
29% of Gross Income + 10% of Basic Order (31.9%)

AGES 13—21 (oldest child)

ANNUAL GROSS INCOME OF NONCUSTODIAL PARENT	CHILD SUPPORT ORDER
0 — \$7,500	Discretion — Minimum \$50/month
\$7,501 — 15,000	26% of Gross Income + 15% of Basic Order (29.9%)
15,001 — 25,000	27% of Gross Income + 15% of Basic Order (31.05%)
25,001 — 50,000	28% of Gross Income + 15% of Basic Order (32.2%)
50,001 — 75,000	29% of Gross Income + 15% of Basic Order (33.35%)

CHART 3
CHILD SUPPORT ORDER FORMULA
FOR THE SUPERIOR COURT
THREE CHILDREN
AGES 0—6 (oldest child)

ANNUAL GROSS INCOME OF NONCUSTODIAL PARENT	CHILD SUPPORT ORDER
0 — \$7,500	Discretion — Minimum \$50/month
\$7,501 — 15,000	30% of Gross Income
15,001 — 25,000	31% of Gross Income
25,001 — 50,000	32% of Gross Income
50,001 — 75,000	33% of Gross Income

AGES 7—12 (oldest child)

ANNUAL GROSS INCOME OF NONCUSTODIAL PARENT	CHILD SUPPORT ORDER
0 — \$7,500	Discretion — Minimum \$50/month
\$7,501 — 15,000	30% of Gross Income + 10% of Basic Order (33.0%)
15,001 — 25,000	31% of Gross Income + 10% of Basic Order (34.1%)
25,001 — 50,000	32% of Gross Income + 10% of Basic Order (35.2%)
50,001 — 75,000	33% of Gross Income + 10% of Basic Order (36.3%)

AGES 13—21 (oldest child)

ANNUAL GROSS
INCOME OF
NONCUSTODIAL
PARENT

CHILD SUPPORT
ORDER

0	— \$7,500
\$7,501	— 15,000
15,001	— 25,000
25,001	— 50,000
50,001	— 75,000

Discretion — Minimum \$50/month
30% of Gross Income + 15% of Basic Order (34.5%)
31% of Gross Income + 15% of Basic Order (35.65%)
32% of Gross Income + 15% of Basic Order (36.8%)
33% of Gross Income + 15% of Basic Order (37.95%)

CHART 4
CHILD SUPPORT ORDER FORMULA
FOR THE SUPERIOR COURT
FOUR OR MORE CHILDREN
AGES 0—6 (oldest child)

ANNUAL GROSS
INCOME OF
NONCUSTODIAL
PARENT

CHILD SUPPORT
ORDER

0	— \$7,500
\$7,501	— 15,000
15,001	— 25,000
25,001	— 50,000
50,001	— 75,000

Discretion — Minimum \$50/month
32% of Gross Income
33% of Gross Income
34% of Gross Income
35% of Gross Income

AGES 7—12 (oldest child)

ANNUAL GROSS
INCOME OF
NONCUSTODIAL
PARENT

CHILD SUPPORT
ORDER

0	— \$7,500
\$7,501	— 15,000
15,001	— 25,000
25,001	— 50,000
50,001	— 75,000

Discretion — Minimum \$50/month
32% of Gross Income + 10% of Basic Order (35.2%)
33% of Gross Income + 10% of Basic Order (36.3%)
34% of Gross Income + 10% of Basic Order (37.4%)
35% of Gross Income + 10% of Basic Order (38.5%)

AGES 13—21 (oldest child)

ANNUAL GROSS INCOME OF NONCUSTODIAL PARENT	CHILD SUPPORT ORDER
0 — \$7,500	Discretion — Minimum \$50/month
\$7,501 — 15,000	32% of Gross Income + 15% of Basic Order (36.8%)
15,001 — 25,000	33% of Gross Income + 15% of Basic Order (37.95%)
25,001 — 50,000	34% of Gross Income + 15% of Basic Order (39.1%)
50,001 — 75,000	35% of Gross Income + 15% of Basic Order (40.25%)

CHART 5
1989 POVERTY LEVELS (ANNUALIZED)
FOR THE DISTRICT OF COLUMBIA

NUMBER OF PERSONS	POVERTY LEVEL GROSS INCOME
1	\$ 6,314
2	8,075
3	9,890
4	12,675
5	14,994
6	16,927
7	19,127
8	21,256
9 or more	25,296

STANDARD INCOME DISREGARD FOR
PETITIONER'S ADJUSTED GROSS INCOME

NUMBER OF CHILDREN	AMOUNT
1	\$16,500
2	18,500
3	20,500
4	22,500

For each additional child, add \$2,000.

(r) A child support order shall not be deemed invalid on the sole basis that the child support order was issued pursuant to the Superior Court of the District of Columbia Child Support Guideline and prior to the effective date of the Child Support Guideline Amendment Emergency Act of 1989, effective December 21, 1989 (D.C. Act 8-127, 37 DCR 3). (Mar. 15, 1990, D.C. Law 8-90, § 2(b), 37 DCR 758; July 25, 1990, D.C. Law 8-150, § 2(b), 37 DCR 3720; Sept.

26, 1990, D.C. Law 8-165, § 3, 37 DCR 4827; Mar. 16, 1995, D.C. Law 10-217, § 3, 41 DCR 8040; Apr. 9, 1997, D.C. Law 11-255, § 18(e), 44 DCR 1271.)

Section references. — This section is referred to in §§ 16-911 and 16-916.

Effect of amendments. — D.C. Law 10-217 substituted “30” for “20” in (o)(6).

D.C. Law 11-255 inserted “the term” in the introductory paragraph of (c); made a punctuation change in the introductory paragraph of (l)(5); and inserted “of this subsection” in (n)(3).

Temporary addition of sections. — Section 2(a) of D.C. Law 8-90 (March 15, 1990, 37 DCR 758) added “§ 16-916.1. Child Support Guideline.” to the table of contents for Chapter 9.

Sections 2(b) and 3 of D.C. Law 8-90 added §§ 16-916.1 and 16-916.2. Section 4(b) of D.C. Law 8-90 provided that the act shall expire on the 225th day of its having taken effect.

Temporary amendment of section. — Section 3 of D.C. Law 10-210 substituted “30” for “20” in (o)(6).

Section 4(b) of D.C. Law 10-210 provided that the act shall expire on the 225th day of its having taken effect.

Emergency act amendments. — For temporary addition of §§ 16-916.1 and 16-916.2, see §§ 2 and 3 of the Child Support Guideline Amendment Emergency Act of 1989 (D.C. Act 8-127, December 21, 1989, 37 DCR 3).

For temporary amendment of section, see § 3 of the Child Support Enforcement Emergency Amendment Act of 1994 (D.C. Act 10-322, August 4, 1994, 41 DCR 5373), § 3 of the Child Support Enforcement Congressional Adjournment Emergency Amendment Act of 1994 (D.C. Act 10-328, October 21, 1994, 41 DCR 7158), and § 3 of the Child Support Enforcement Congressional Adjournment Emergency Amendment Act of 1995 (D.C. Act 11-4, January 19, 1995, 42 DCR 543).

Legislative history of Law 8-90. — Law 8-90, the “Child Support Guideline Amendment Temporary Act of 1989,” was introduced in Council and assigned Bill No. 8-491. The Bill was adopted on first and second readings on December 19, 1989, and January 2, 1990, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act No. 8-141 and transmitted to both Houses of Congress for its review. D.C. Law 8-90 became effective on March 15, 1990.

Legislative history of Law 8-150. — Law 8-150, the “Child Support Guideline Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-461, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by the Mayor on May 30, 1990, it was assigned Act

No. 8-208 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-165. — Law 8-165, the “District of Columbia Statutory Savings Provision Act of 1990,” was introduced in Council and assigned Bill No. 8-552, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed by the Mayor on July 12, 1990, it was assigned Act No. 8-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-210. — Law 10-210, the “Child Support Enforcement Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-739. The Bill was adopted on first and second readings on July 19, 1994, and October 4, 1994, respectively. Signed by the Mayor on October 21, 1994, it was assigned Act No. 10-331 and transmitted to both Houses of Congress for its review. D.C. Law 10-210 became effective on March 14, 1995.

Legislative history of Law 10-217. — Law 10-217, the “Child Support Enforcement Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-740. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-354, and transmitted to both Houses of Congress for its review. D.C. Law 10-217 became effective on March 16, 1995.

Legislative history of Law 11-255. — See note to § 16-909.1.

Purpose. — The philosophy behind child support is that the child should be able to enjoy the standard and quality of life the child would have experienced in an intact family with the noncustodial parent present. *Walker v. Simmons*, 118 WLR 2593 (Super. Ct. 1990).

Child support payments are for the benefit of the children, not the mother, and the children’s interest is paramount. *Nevarez v. Nevarez*, App. D.C., 626 A.2d 867 (1993).

One of the basic principles of child support in the District of Columbia, embodied in both statutory guidelines and caselaw, is that the child is entitled to a level of support commensurate with the income and lifestyle of the parents. *Galbis v. Nadal*, App. D.C., 626 A.2d 26 (1993).

The child’s needs should not be interpreted so narrowly as to deprive the child of the quality of life enjoyed by the noncustodial parent. *Galbis v. Nadal*, App. D.C., 626 A.2d 26 (1993).

The primary purpose of the District’s child support legislation is to protect the rights of

District of Columbia children, not to penalize District of Columbia fathers. *Mims v. Mims*, App. D.C., 635 A.2d 320 (1993).

Compliance with section. — The procedures for hearing and determination of child support set out in this section and § 30-506 should be followed when the court seeks to impose a support obligation relying upon these statutory provisions. In *re X.B.*, App. D.C., 637 A.2d 1144 (1994).

Applicability of section. — Even though the Guidelines provides that “application of the Guidelines shall be presumptive,” and that “the guideline shall be applied presumptively,” the guideline percentages are applicable only to certain income levels and not to others; at income levels for which no guideline percentages were prescribed by the Committee, the needs of the child and the ability of the parents to pay must be proved as would be necessary in a traditional child support proceeding brought prior to the enactment of the Guideline. *District of Columbia v. Jackson*, 125 WLR 229 (Super. Ct. 1997).

No preemption by federal statutes protecting veterans' disability benefits. — The D.C. child support guidelines, which authorize courts to consider a parent's veterans' disability benefits as income in determining the amount of child support obligation, are not pre-empted by the federal statutory scheme that protects veterans' disability benefits from state court infringement; in providing veterans' disability benefits, Congress intended to compensate for impaired earning capacity and to provide reasonable and adequate compensation not only for disabled veterans, but also for their families. *Loving v. Sterling*, App. D.C., 680 A.2d 1030 (1996).

Limitation of broad discretion. — Traditionally, the trial court is invested with broad discretion in determining the rights of minor children to support, and in an original action for support, the trial court's exercise of discretion will not be set aside for abuse unless the order of support is not reasonably related to the court's written findings with respect to the needs of the persons to receive such support and the ability of the payor to pay; this discretion has been somewhat limited by the enactment of the guidelines embodied in this section. *Negretti v. Negretti*, App. D.C., 621 A.2d 388 (1993).

Subsection (e)(2) is advisory. *District of Columbia v. Jackson*, 125 WLR 229 (Super. Ct. 1997).

Application of clean hands doctrine. — Applying the clean hands doctrine to the misconduct of a custodial parent in such a way as to prevent an increase in the amount of child support which would otherwise be justified would arguably be against public policy; however, applying the doctrine to the misconduct of

a noncustodial parent so as to bar a reduction request would not transgress that public policy and in fact may be consistent with such a policy. *J.W. v. J.A.*, 121 WLR 449 (Super. Ct. 1993).

Child's reasonable expenses. — Reasonable expenses for a child are not to be limited to bare necessities of life but may extend to articles and activities consistent with the noncustodial parent's station in life. *Walker v. Simmons*, 118 WLR 2593 (Super. Ct. 1990).

Assessment of child's needs. — The courts are obliged to assess the child's needs in determining the amount of any court-ordered support payments. *Nowak v. Trezevant*, App. D.C., 685 A.2d 753 (1996).

Cost of living. — Where a child support amount based on the noncustodial parent's income, under the support guidelines, exceeded what the custodial parent indicated as necessary because the cost of living was lower where the custodial parent lived, the court held the custodial parent would not be penalized for where they lived by lowering the amount of support. *Walker v. Simmons*, 118 WLR 2593 (Super. Ct. 1990).

Mutual obligation of support. — The mutual obligation of both parents to support a child born in or out of wedlock also underlies the child support guidelines. *W.M. v. D.S.C.*, App. D.C., 591 A.2d 837 (1991).

Retroactive application. — The plain language of this section supports no distinction between appealed and unappealed orders; it validates, retroactively, any order issued pursuant to the 1987 guideline before the date of enactment of the curative legislation. *A.S. v. District of Columbia ex rel. B.R.*, App. D.C., 593 A.2d 646 (1991).

Retroactive child support. — A child's needs begin at birth; accordingly, retroactive child support should normally be awarded for a child born out of wedlock. *W.M. v. D.S.C.*, App. D.C., 591 A.2d 837 (1991).

Absent a showing of reasons why a father should be relieved of his statutory obligation to contribute to the support of his child from the moment of the child's birth, the court should award child support retroactive to the date of the child's birth. *W.M. v. D.S.C.*, App. D.C., 591 A.2d 837 (1991).

Res judicata barred petitioner from seeking requested retroactive support where petitioner had already had one chance to request the relief in an earlier claim and failed to do so. *District of Columbia ex rel. Harvey v. Washington*, 121 WLR 1353 (Super. Ct. 1993).

Voluntary changes in ability to pay. — Voluntary changes in ability to pay are not material, because a voluntary change is not a change in the individual's actual ability to pay. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

A voluntary decrease in income will not jus-

tify a reduction in support payments. *Guyton v. Guyton*, App. D.C., 602 A.2d 1143 (1992).

The father's voluntary accumulation of obligations to various creditors, e.g., by the purchase of an expensive automobile since the mother's filing of the motion to increase child support, did not entitle him to a reduction in child support payments, for his claimed inability to pay was self-inflicted. *Nevarez v. Nevarez*, App. D.C., 626 A.2d 867 (1993).

Change in circumstances affecting ability to pay. — The good faith nature of a change in circumstances is a factor that the court considers, employing three factors in determining good faith: (1) The original circumstances of the change; (2) the obligor's efforts to continue making payments; and (3) the duration of the change. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

Whether the original change in circumstances is voluntary or involuntary, in the absence of permanent disability, the obligor must, after a reasonable period of time, make good faith efforts to produce sufficient income to enable the obligor to make the payments. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

To warrant modification of a support order, the moving party has the burden of showing a substantial and material change of circumstances with respect to either the needs of the children or the financial ability of the parent to pay. *Guyton v. Guyton*, App. D.C., 602 A.2d 1143 (1992).

Where termination of employment and inability to locate new employment was involuntary, the trial court erred in imputing to a parent an income which current economic conditions would not allow him to realize. *Guyton v. Guyton*, App. D.C., 602 A.2d 1143 (1992).

Defendant who faced lengthy incarceration for his crimes, and whose income while in prison would have been essentially nothing, should not have been ordered to pay child support for the length of imprisonment. *Lewis v. Lewis*, App. D.C., 637 A.2d 70 (1994).

Noncustodial parent not regularly employed but able to work. — In cases where a noncustodial parent is not regularly employed but is able to work, it is customary to enter a nominal support order pursuant to subsection (e)(3), which is typically entered with the consent of the noncustodial parent. *J.W. v. J.A.*, 121 WLR 449 (Super. Ct. 1993).

Wealthy noncustodial parent. — Subsection (f) of this section merely allows the trial court greater discretion in determining an appropriate award amount when the noncustodial parent is relatively wealthy; it does not exempt that parent from the general principle that underlies the guidelines as a whole, that support payments shall be commensurate with

parental income. *Galbis v. Nadal*, App. D.C., 626 A.2d 26 (1993).

Income tax refund. — Income tax refund which arose as a result of tax benefits of rental property owned by defendant was properly viewed as disposable income in calculating defendant's annual income for child support. *W.M. v. D.S.C.*, App. D.C., 591 A.2d 837 (1991).

Failure to depart from guideline. — There was no abuse of discretion, much less a violation of due process, in the commissioner's failure to depart from the guideline. *A.S. v. District of Columbia ex rel. B.R.*, App. D.C., 593 A.2d 646 (1991).

Departure from guideline. — Application of the emergency child support guidelines is presumptive. The guidelines list certain factors which may be considered to overcome the presumption, but if the court decides that the guideline should not apply in a particular case, it must explain the reasons for its decision in writing. *J.A.W. v. D.M.E.*, App. D.C., 591 A.2d 844 (1991).

Although the guidelines in this section create a presumption that the amount arrived at through the prescribed calculations is the appropriate support obligation for the noncustodial parent, a judicial officer entering a support order may depart from the guidelines in exceptional circumstances if the reasons for not applying the guidelines are explained in writing. *Robinson v. Robinson*, App. D.C., 629 A.2d 562 (1993).

As a practical matter, the guideline percentage is applied after certain fundamental facts have been established by the custodial parent—most notably the gross incomes of the parents, the ages and number of children to be supported, child care costs and medical insurance costs; thereafter, the burden of going forward shifts to the party seeking a departure from the guidelines presumption. *District of Columbia v. Jackson*, 125 WLR 229 (Super. Ct. 1997).

Variance between amount prescribed by guidelines and amount actually awarded.

— Since the difference between the amount prescribed by the guidelines and the amount actually awarded was less than 3 percent, the trial judge's calculation of the child's needs comported with the presumptive amount under the guidelines. *J.A.W. v. D.M.E.*, App. D.C., 591 A.2d 844 (1991).

Judicial review. — An award of child support under these guidelines shall not be disturbed unless the trial court has abused its discretion in making the award. *Weiner v. Weiner*, App. D.C., 605 A.2d 18 (1992).

Where the trial court's findings reflect a careful consideration of the needs of the children, they do not demonstrate an abuse of discretion. *Weiner v. Weiner*, App. D.C., 605 A.2d 18 (1992).

Temporary reduction in child support. — Considering the father's extraordinary debt on student loans and for back tax liability to the Internal Revenue Service, under the authority of paragraph (1)(5), court granted a temporary period of reduced child support to permit the repayment of these debts and rearrangement of his financial obligations. *R.M.N. v. M.R.N.*, 119 WLR 1985 (Super. Ct. 1991).

Modification of out-of-state orders. — The guideline in subsection (a) of this section, which provides, inter alia, that "in any case that seeks to modify an existing child support order" in which child support is appropriate, the judicial officer shall "enter a judgment in accordance with the child support guideline," applies to a Texas court order which was not issued pursuant to the guideline or pursuant to § 30-504, as § 30-504(a) provides that any child support order may be modified upon a showing of a substantial and material change in circumstances. Therefore, the reference in the guideline to § 30-504, although perhaps imprecisely formulated, was designed to bring within the ambit of subsection (o) of this section all child support orders cognizable under § 30-504(a), which effectively means all child support orders. *Nevarez v. Nevarez*, App. D.C., 626 A.2d 867 (1993).

Child support order necessary for modification. — The provisions of § 30-504(a) and this section apply only if there was an existing child support order; such an order is a prerequisite to the trial court's modification of the amount of child support. *Clark v. Clark*, App. D.C., 638 A.2d 667 (1994).

Motion to modify payments. — A motions judge, in ruling on a motion to modify child support payments, must determine whether there is a financial ability to pay; therefore, in view of his counsel's representations that the father was prepared for a financial review, the motions judge could not properly deny a motion to suspend payments without first determining that appellant remained financially able to

make the payments. *Garcia v. Andrade*, App. D.C., 622 A.2d 64 (1993).

The decision of whether to grant or deny a motion to suspend payments is within the sound discretion of the trial court; however, that discretion is not without limits. *Garcia v. Andrade*, App. D.C., 622 A.2d 64 (1993).

Reliance on prior order not grounds for denying modification. — Where a father sought to continue paying child support at a level established in a Texas support decree, due to his reliance on that payment level in his financial obligations, but where he did not show that such reliance was reasonable, or that the amount ordered by the Texas court was designed to be of permanent duration in the absence of unforeseen and unforeseeable events, and where the father likewise failed to demonstrate that the application to him of a guideline routinely enforced against the generality of noncustodial parents living in this jurisdiction would "yield a patently unjust result," fairness dictated a modification of support. *Nevarez v. Nevarez*, App. D.C., 626 A.2d 867 (1993).

Domicile of child. — If the father and the mother have separate domiciles, minor children take the domicile of the parent with whom they actually live. *Mims v. Mims*, App. D.C., 635 A.2d 320 (1993).

Temporary support order. — Once a temporary support order was entered by the court, there was an order within the meaning of subsection (a) of this section and § 30-504(a). *Clark v. Clark*, App. D.C., 638 A.2d 667 (1994).

Temporary support order, which came about only because of the failure to make payments pursuant to parties' property settlement agreement, became an order of the court enforceable against the husband and served as a basis for a modification pursuant to § 30-504(a) and this section. *Clark v. Clark*, App. D.C., 638 A.2d 667 (1994).

Cited in *E.S. v. L.S.*, 122 WLR 573 (Super. Ct. 1994).

§ 16-916.2. Child Support Guideline Commission.

(a) There is established a Child Support Guideline Commission ("Commission"). The Commission shall study and make recommendations on the child support guideline to the Council of the District of Columbia ("Council").

(b) The Commission shall consist of a chairperson and 14 members who are District of Columbia residents. The Chief Judge of the Superior Court of the District of Columbia may appoint 5 members. The Mayor of the District of Columbia ("Mayor") shall appoint 1 member to represent the Corporation Counsel and 1 member to represent the Child Support Division of the Department of Human Services. The Mayor, with the advice and consent of the Council, shall appoint 3 members who shall be members of the District of Columbia Bar ("Bar") and recognized experts in the field of family law. The

Chairman of the Committee on the Judiciary of the Council shall be the chairperson of the Commission and appoint 2 other members. The Chairman of the Committee on Human Services of the Council shall appoint 2 members.

(c)(1) Each member shall be appointed for a 2-year term. A vacancy shall be filled in the same manner as the original appointment.

(2) A majority of the members shall constitute a quorum. A quorum shall be necessary for the Commission to conduct business.

(d) The functions of the Commission shall include:

(1) To annually review and update the data on poverty levels used in multiple family determinations.

(2) To review pertinent economic data and data on the functioning of the guideline that the Commission gathers or that is brought to the attention of the Commission. The Commission shall meet not less than once annually for this purpose and shall review formally the guideline and vote on any proposed change not less than once every 4 years.

(3) To hold a public meeting at least annually. Thirty days public notice shall be given for a public meeting. The Commission shall meet to receive oral or written comments from members of the Bar or the public.

(4) To perform other tasks that are assigned by the Council to develop, update, or monitor the guideline.

(e) Members of the Commission shall serve without compensation but shall be reimbursed for any reasonable expense associated with service on the Commission.

(f) The Mayor shall provide sufficient space for the Commission to operate and may detail personnel to assist the Commission. The Mayor shall also direct any agency contacted by the Commission to give full cooperation to the Commission. (Mar. 15, 1990, D.C. Law 8-90, § 3, 37 DCR 758; July 25, 1990, D.C. Law 8-150, § 3, 37 DCR 3720.)

Temporary addition of sections. — See note to § 16-916.1.

Emergency act amendments. — See note to § 16-916.1.

Legislative history of Law 8-90. — See note to § 16-916.1.

Legislative history of Law 8-150. — See note to § 16-916.1.

§ 16-916.3. Proceedings in which child support matters may be considered.

The court may consider child support matters, as it deems appropriate, in any proceeding to determine the care and custody of a minor child or children. (Apr. 18, 1996, D.C. Law 11-112, § 2(c), 43 DCR 574.)

Effect of amendments. — D.C. Law 11-112 added this section.

Legislative history of Law 11-112. — Law 11-112, the “Joint Custody of Children Act of 1996,” was introduced in Council and assigned Bill No. 11-026, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 31, 1996, it was assigned Act No. 11-202 and transmitted to both Houses of Congress for its review. D.C. Law 11-112 became effective on April 18, 1996.

§ 16-917. Co-respondents as defendants; service of process.

In a divorce case where adultery is charged, the person or persons with whom the adultery is charged to have been committed shall be made defendant or defendants and brought in by personal service of process or by publication as in other cases. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; 1973 Ed., § 16-917.)

Failure to return process bars counterclaim. — Where the process server fails to make a proper return so that there is a failure to make the alleged co-respondent a party, a

counterclaim for divorce for adultery is not maintainable. *Williams v. Williams*, App. D.C., 378 A.2d 668 (1977).

§ 16-918. Appointment of counsel; compensation; termination of appointment.

(a) In all cases under this chapter, where the court deems it necessary or proper, a disinterested attorney may be appointed by the court to enter his appearance for the defendant and actively defend the cause.

(b) In any proceeding wherein the custody of a child is in question, the court may appoint a disinterested attorney to appear on behalf of the child and represent his best interests.

(c) An attorney appointed under this section may receive such compensation for his services as the court determines to be proper, which the court may order to be paid by either or both of the parties.

(d) Notwithstanding any other provision of law or any rule of court, the appearance of an attorney in any action under this chapter before a court of original jurisdiction shall be deemed to have terminated for the purpose of service of any motion, process, or any other pleading, upon completion of the case ending in a judgment, adjudication, decree, or final order from which no appeal has been taken when the time allowed for an appeal expires, and, if notice of appeal has been entered, upon the date of the final disposition of the appeal. There shall be no action required of any person or attorney under this subsection, but the court having jurisdiction over the matter may suspend the termination of the appearance on its own motion, or on the motion of any party to the case prior to the expiration of the time for appeal. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(e)(3)(A); 1973 Ed., § 16-918; Apr. 7, 1977, D.C. Law 1-107, title I, § 110, 23 DCR 8737.)

Legislative history of Law 1-107. — See note to § 16-902.

Absence of attorney at hearing. — The grant of a divorce without a fact-finding hearing at which appointed attorney is present is error. *Campbell v. Campbell*, App. D.C., 325 A.2d 188 (1974), *aff'd*, App. D.C., 353 A.2d 276 (1976).

Appointing attorneys employed by same

entity to represent both parties constitutes error. — A refusal to vacate an order appointing an attorney to represent the defendant where that attorney is employed by the same entity which employs the lawyer appointed to represent the plaintiff is an error in the absence of a showing that the supply of other available attorneys has been exhausted. *Borden v. Borden*, App. D.C., 277 A.2d 89 (1971).

Appealable order as to appointment of attorney. — An order which refuses to set aside a previous order of an appointment of an attorney for the defendant, although not final in the sense of disposing of the case on its merits, is appealable in that it has a final and irreparable effect upon the rights of the parties. *Borden v. Borden*, App. D.C., 277 A.2d 89 (1971).

Parties suing in forma pauperis. — Parties suing in forma pauperis are exempt from paying any minimum attorneys' fees. *Harris v. Harris*, 424 F.2d 806 (D.C. Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55 (1970).

Factors considered in determining award. — Factors to be considered in determining an award of attorney's fees are: (1) The necessity for the services of an attorney; (2) the quality and nature of the work performed; (3) the financial ability of the party ordered to pay; and (4) under certain circumstances, the fault of the nonaggrieved party. *Kelly v. Clyburn*, App. D.C., 490 A.2d 188 (1985).

Child support. — The literal language of subsection (b) does not speak in terms addressing explicitly "child support," but "child support" is a logical component embraced within the concept of "the custody of a child" as set forth in that subsection and for legal purposes of the child support law; although age 35, because of mental handicap and intellectual impairment, and incapacity for independent living, a person could be treated as a "child" under that language and within the philosophy and legal principles established by the District

of Columbia Court of Appeals. *Harris v. Harris*, 119 WLR 665 (Super. Ct. 1991).

Appointment on Court's own initiative. — The fact appointment of an attorney and Guardian Ad Litem was on the Court's own initiative should have no bearing on that attorney's entitlement to compensation for professional services rendered. *Harris v. Harris*, 119 WLR 665 (Super. Ct. 1991).

Psychiatric evaluation fee. — Where the psychological evaluation and the testimony of a psychologist were critical to the Court's decision, the request for payment of the psychologist's fee was granted. *Harris v. Harris*, 119 WLR 665 (Super. Ct. 1991).

Discretion of court. — Once an attorney's fee award is deemed appropriate, the trial court has discretion not only to set the amount of the fee but to decide which party must pay. As to the latter question, this section permits ordering a partial payment from both parties. *Kelly v. Clyburn*, App. D.C., 490 A.2d 188 (1985).

In determining the timeliness of an appointed attorney's motion for compensation, the trial court is required to exercise its discretion to deny fees in cases in which a post-judgment motion unfairly surprises or prejudices the affected party. *Kelly v. Clyburn*, App. D.C., 490 A.2d 188 (1985).

Cited in Neighborhood Legal Servs. Program v. Ryan, App. D.C., 276 A.2d 728 (1971); *Feaster v. Feaster*, App. D.C., 359 A.2d 272 (1976); *Parsley v. Parsley*, 110 WLR 837 (Super. Ct. 1982); *Williams v. Williams*, App. D.C., 495 A.2d 754 (1985); *Charles v. Charles*, App. D.C., 505 A.2d 462 (1986).

§ 16-919. Proof required on default or admission of defendant.

A decree for a divorce, or a decree annulling a marriage, may not be rendered on default, without proof; and an admission contained in the answer of the defendant may not be taken as proof of the facts charged as the ground of the application, but shall be proved by other evidence in all cases. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; 1973 Ed., § 16-919.)

§ 16-920. Effective date of decree for annulment or absolute divorce.

A decree, annulling or dissolving a marriage, or granting an absolute divorce, shall not become effective until the time for noting an appeal shall have expired, and, if notice of appeal has been entered, such decree shall not become effective until the date of the final disposition of the appeal. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88-241, § 1; Sept. 29, 1965, 79 Stat. 890, Pub. L. 89-217, § 4; 1973 Ed., § 16-920.)

Legislative intent. — Absent explicit language extending a stay to all provisions within divorce decrees, the legislature did not intend to broaden this section when it was last amended in 1965, as broader reading would invariably also delay alimony, child support, and custody rulings in every case on the domestic relations calendar. Indeed, if such an interpretation were to prevail, an unsavory practice may develop whereby all satellite rulings in divorce or annulment cases would be reserved until the divorce became effective. *Fowlkes v. Fowlkes*, 120 WLR 2589 (Super. Ct. 1992).

Subsequent marriage before effective date of divorce. — Any marriage contracted by a party to a divorce within the time provided under this section is bigamous. *Jay v. Jay*, App. D.C., 212 A.2d 331 (1965).

A ceremonial marriage performed out-of-state by one of the parties to a District divorce before the effective date of the divorce is void ab initio and not merely voidable. *Jay v. Jay*, App. D.C., 212 A.2d 331 (1965).

Cited in *Bolle v. Hume*, App. D.C., 619 A.2d 1192 (1993).

§ 16-921. Validity of marriage, action to determine.

When the validity of an alleged marriage is denied by either of the parties thereto the other party may institute an action for affirming the marriage, and upon due proof of the validity thereof the court shall decree it to be valid. The decree shall be conclusive upon all parties concerned. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88-241, § 1; 1973 Ed., § 16-921.)

Foreign divorces. — A divorce received in a foreign country is void where neither party is domiciled or even physically present there except for a few hours and where the spouses merely execute powers of attorney, but enter no appearance in court. *Clagett v. King*, App. D.C., 308 A.2d 245 (1973).

A party who obtains an invalid foreign divorce decree is estopped from later challenging that decree on jurisdictional grounds. *Clagett v. King*, App. D.C., 308 A.2d 245 (1973).

§ 16-922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902.

This chapter does not invalidate any marriage solemnized according to law before January 1, 1902, or any decree or judgment of divorce pronounced before that date. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88-241, § 1; 1973 Ed., § 16-922.)

§ 16-923. Abolition of action for breach of promise, alienation of affections, and criminal conversation.

Causes of action for breach of promise, alienation of affections, and criminal conversation are hereby abolished. (1973 Ed., § 16-923; Apr. 7, 1977, D.C. Law 1-107, title I, § 111(a), 23 DCR 8737.)

Legislative history of Law 1-107. — See note to § 16-902.

Cited in *Bernay v. Sales*, App. D.C., 435 A.2d 398 (1981); *de la Croix de Lafayette v. de la*

Croix de Lafayette, 117 WLR 2133 (Super. Ct. 1989).

§ 16-924. Expedited judicial hearing.

(a) In any case brought under D.C. Code, section 11-1101(1), (3), (10), or (11), involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a hearing commis-

sioner in the Family Division of the Superior Court finds that there is an existing duty of support, the hearing commissioner shall conduct a hearing on support and, within 30 days from the conclusion of the hearing, the hearing commissioner shall issue written findings of fact and conclusions of law that shall include, but not be limited to, the following:

- (1) The name and relationship of the parties;
- (2) The name, age, and any exceptional information about the child;
- (3) The duty of support owed;
- (4) The amount of monthly support payments;
- (5) The annual earnings of the parents;
- (6) The social security number of the parents;
- (7) The name, address, and telephone number of each parent's employer;
- (8) The name, address, and telephone number of any person, organization, corporation, or government entity that holds real or personal assets of the obligor; and

(9) A statement that a responsible relative is bound by this order to notify the Court within 10 days of any change in address or employment.

(b) The alleged responsible relative may be represented by counsel at any stage of the proceedings.

(c) If in a case under subsection (a) of this section the hearing commissioner finds that the case involves complex issues requiring judicial resolution, the hearing commissioner shall establish a temporary support obligation and refer unresolved issues to a judge, except that the hearing commissioner shall not establish a temporary support order if parentage is at issue.

(d) In cases under subsections (a) and (c) of this section in which the hearing commissioner finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceedings under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the hearing commissioner shall enter a default order.

(e) Subject to subsection (f) of this section, the findings of the hearing commissioner shall constitute a final order of the Superior Court.

(f) A review of the hearing commissioner's findings in a case under subsections (a) and (c) of this section may be made by a judge of the Family Division sua sponte and shall be made upon the motion of 1 of the parties, which shall be filed within 30 days after the judgment. An appeal to the District of Columbia Court of Appeals may be made only after a hearing is held in the Superior Court. (Feb. 24, 1987, D.C. Law 6-166, § 33(a)(5)(B), 33 DCR 6710; Mar. 16, 1995, D.C. Law 10-223, § 2(f), 41 DCR 8051.)

Effect of amendments. — D.C. Law 10-223 substituted "30" for "10" in the first sentence of (f).

Legislative history of Law 6-166. — See note to § 16-573.

Legislative history of Law 10-223. — See note to § 16-909.

Effective date. — Section 34(b) of D.C. Law 6-166 provided that: "Section 33(a)(5)(B), the amendment to D.C. Code, § 16-924, which pro-

vides for an expedited judicial hearing in cases involving the establishment or enforcement of child support, shall not take effect until the effective date of Congressional legislation providing permanent authority for hearing commissioners in the District of Columbia to hear child support cases, or until February 24, 1987, whichever is later."

Congressional legislation providing permanent authority for hearing commissioners in

§ 16-924

PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

the District of Columbia to hear child support cases was enacted effective October 28, 1986.

Mayor authorized to issue rules. — See note to § 16-909.2.

CHAPTER 10. PROCEEDINGS REGARDING INTRAFAMILY OFFENSES.

Subchapter I. Intrafamily Proceedings Generally.

Sec.

- 16-1001. Definitions.
 16-1002. Complaint of criminal conduct; referrals to Family Division.
 16-1003. Petition for civil protection.
 16-1004. Petition; notice; temporary order.
 16-1005. Hearing; evidence; protection order.
 16-1006. Dismissal of petition; notice.

Subchapter II. Parental Kidnapping.

- 16-1021. Definitions.
 16-1022. Prohibited acts.

Sec.

- 16-1023. Defense to prosecution; continuous offenses; expenses; jurisdiction.
 16-1024. Penalties.
 16-1025. Prosecution by Corporation Counsel.
 16-1026. Expungement.

Subchapter III. Domestic Violence.

- 16-1031. Arrests.
 16-1032. Records.
 16-1033. Civil liability.
 16-1034. Training program.

*Subchapter I. Intrafamily Proceedings Generally.***§ 16-1001. Definitions.**

For purposes of this subchapter:

(1) The term “complainant” means an individual in the relationship described in paragraph (5) who is the victim of an intrafamily offense and who files or for whom is filed a petition for protection under this subchapter.

(2) The term “Director of Social Services” means the Director of Social Services in the Superior Court of the District of Columbia.

(3) The term “Family Division” means the Family Division of the Superior Court of the District of Columbia.

(4) The term “family member” includes any individual in the relationship described in paragraph (5).

(5) The term “intrafamily offense” means an act punishable as a criminal offense committed by an offender upon a person:

(A) to whom the offender is related by blood, legal custody, marriage, having a child in common, or with whom the offender shares or has shared a mutual residence; or

(B) with whom the offender maintains or maintained a romantic relationship not necessarily including a sexual relationship. A person seeking a protection order under this subparagraph shall reside in the District of Columbia or the underlying intrafamily offense shall have occurred in the District of Columbia.

(6) The term “respondent” means any person who is accused of having committed an intrafamily offense in a petition for protection filed under this subchapter. (July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1001; Sept. 14, 1982, D.C. Law 4-144, § 2, 29 DCR 3131; Apr. 30, 1991, D.C. Law 8-261, § 2(c)(1), 37 DCR 5001; Mar. 21, 1995, D.C. Law 10-237, § 2(a), 42 DCR 36.)

Cross references. — As to exclusive jurisdiction of Family Division of Superior Court, see § 11-1101.

As to age of majority, see note following § 21-101.

Section references. — This section is referred to in §§ 16-911, 16-914, and 16-1003.

Effect of amendments. — D.C. Law 10-237 substituted “or” for “and” at the end of (5)(A) and rewrote (5)(B).

Legislative history of Law 4-144. — Law 4-144, the “Proceedings Regarding Intrafamily Offenses Amendment Act of 1982,” was introduced in Council and assigned Bill No. 4-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-212 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-261. — See note to § 16-1031.

Legislative history of Law 10-237. — Law 10-237, the “Domestic Violence in Romantic Relationships Act of 1994,” was introduced in Council and assigned Bill No. 10-477, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-380 and transmitted to both Houses of Congress for its review. D.C. Law 10-237 became effective on March 21, 1995.

Constitutionality. — This section is not unconstitutionally vague. *McKnight v. Scott*, App. D.C., 665 A.2d 973 (1995).

Liberal construction. — The Intrafamily Offenses Act is a remedial statute and as such should be liberally construed for the benefit of the class it is intended to protect. *Maldonado v. Maldonado*, App. D.C., 631 A.2d 40 (1993).

Purpose. — The Intrafamily Offenses Act was designed to protect victims of family abuse from acts and threats of violence. *Cruz-Foster v. Foster*, App. D.C., 597 A.2d 927 (1991).

Relationship to which section applies. — A relationship between a woman, her child, and

a man who lives with the woman for a number of years is close enough to require the application of this section. *Robinson v. United States*, App. D.C., 317 A.2d 508 (1974).

A couple engaged to be married falls within the test for an intrafamily offense. *McKnight v. Scott*, App. D.C., 665 A.2d 973 (1995).

“Intrafamily offense” cannot apply offenses by a niece against her aunt unless they share a mutual residence. *United States v. Harrison*, 461 F.2d 1209 (D.C. Cir. 1972).

Evidence insufficient to show the intimate relationship required to order civil protection for an intrafamily offense by the male of one couple who beat up the female of the other couple, where two couples were cohabitating in a household. *Sandoval v. Mendez*, App. D.C., 521 A.2d 1168 (1987).

Relationship between man and girlfriend. — It is not clear whether a relationship between a man and his girlfriend is close enough to come within the contemplation of this section. *Jackson v. United States*, App. D.C., 357 A.2d 409 (1976).

Permanent injunctions. — The Intrafamily Offenses Act does not authorize the issuance of permanent injunctions. *Cruz-Foster v. Foster*, App. D.C., 597 A.2d 927 (1991).

Right to counsel. — The possibility of imprisonment as a punishment for eventual violation of a civil protection order is too remote as of the time the order is entered to trigger a right to counsel. *Cloutterbuck v. Cloutterbuck*, App. D.C., 556 A.2d 1082 (1989).

Cited in *Powell v. Powell*, App. D.C., 547 A.2d 973 (1988); *Thompson v. Thompson*, App. D.C., 559 A.2d 311 (1989); *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989); *In re A.S. & J.S.*, 118 WLR 2221 (Super. Ct. 1990); *Johnson v. United States*, App. D.C., 616 A.2d 1216 (1992), cert. denied, 507 U.S. 996, 113 S. Ct. 1611, 123 L. Ed. 2d 172 (1993).

§ 16-1002. Complaint of criminal conduct; referrals to Family Division.

(a) If, upon the complaint of any person of criminal conduct by another or the arrest of a person charged with criminal conduct, it appears to the United States Attorney for the District of Columbia (hereafter in this chapter referred to as the “United States attorney”) that the conduct involves an intrafamily offense, he shall notify the Director of Social Services. The Director of Social Services may investigate the matter and make such recommendations to the United States attorney as the Director deems appropriate.

(b) The United States attorney may also (1) file a criminal charge based upon the conduct and may consult with the Director of Social Services concerning appropriate recommendations for conditions of release taking into account the intrafamily nature of the offense; or (2) refer the matter to the

Corporation Counsel for the filing of a petition for civil protection in the Family Division. Prior to any such referral, the United States attorney shall consult with the Director of Social Services concerning the appropriateness of the referral.

(c) The institution of criminal charges by the United States attorney shall be in addition to, and shall not affect the rights of the complainant to seek any other relief under this subchapter. Testimony of the respondent in any civil proceedings under this subchapter and the fruits of that testimony shall be inadmissible as evidence in a criminal trial except in a prosecution for perjury or false statement. (July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1002; Sept. 14, 1982, D.C. Law 4-144, § 3, 29 DCR 3131.)

Section references. — This section is referred to in § 16-1031.

Legislative history of Law 4-144. — See note to § 16-1001.

Offenses occurring prior to chapter's effective date. — The Family Division has jurisdiction of intrafamily offenses which occurred before the effective date of this chapter. *United States v. Harrison*, 461 F.2d 1209 (D.C. Cir. 1972).

This subchapter must be liberally construed in furtherance of its remedial purpose. *United States v. Harrison*, 461 F.2d 1209 (D.C. Cir. 1972).

Scope of U.S. Attorney's authority. — Ultimate control of handling of intrafamily offense is vested in United States attorney; only in an extreme case might dismissal be the appropriate judicial response to a failure on his part to notify the Director of Social Services. *Robinson v. United States*, App. D.C., 317 A.2d 508 (1974).

This subchapter does not give the prosecutor unfettered discretion whether or not to proceed

with criminal charges. *United States v. Harrison*, 461 F.2d 1209 (D.C. Cir. 1972).

Failure to notify Director of Social Services. — Although notification of an intrafamily offense is statutorily mandated, sanction court must impose for non-notification is not. Sanction is at discretion of the trial court, but may include dismissal only in extreme cases. *McLeod v. United States*, App. D.C., 568 A.2d 1094 (1990).

When a defendant files a timely motion seeking dismissal for non-notification of the Director of Social Services under this section, the proper procedure is for the trial court to hold defendant's motion to dismiss in abeyance and direct the United States Attorney to notify the Director of Social Services, with a further direction to the Director of Social Services to make a prompt response to the notification. *McLeod v. United States*, App. D.C., 568 A.2d 1094 (1990).

Cited in *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989); *Cruz-Foster v. Foster*, App. D.C., 597 A.2d 927 (1991).

§ 16-1003. Petition for civil protection.

(a) Upon referral by the United States attorney, or upon application of any person or agency for a civil protection order with respect to an intrafamily offense committed or threatened, the Corporation Counsel may file a petition for civil protection in the Family Division. In the alternative to referral to the Corporation Counsel, a complainant on his or her own initiative may file a petition for civil protection in the Family Division.

(b) In any matter referred to the Corporation Counsel by the United States attorney in which the Corporation Counsel does not file a petition, he shall so notify the United States attorney.

(c) Whenever a petition is filed by a complainant at his or her initiative or whenever private counsel enters an appearance in a case originally petitioned by the Corporation Counsel, the complainant or his or her counsel shall promptly notify the Corporation Counsel regarding the filing or entry of appearance.

(d) An action for an intrafamily offense under section 16-1001(5)(B) shall not be brought more than 2 years from the date the right to maintain the action accrues. (July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1003; Sept. 14, 1982, D.C. Law 4-144, § 4, 29 DCR 3131; Mar. 21, 1995, D.C. Law 10-237, § 2(b), 42 DCR 36.)

Effect of amendments. — D.C. Law 10-237 added (d).

Legislative history of Law 4-144. — See note to § 16-1001.

Legislative history of Law 10-237. — See note to § 16-1001.

Cited in Sandoval v. Mendez, App. D.C., 521 A.2d 1168 (1987); Turner v. District of Columbia, App. D.C., 532 A.2d 662 (1987); Powell v.

Powell, App. D.C., 547 A.2d 973 (1988); Cloutterbuck v. Cloutterbuck, App. D.C., 556 A.2d 1082 (1989); Castellanos v. Novoa, 117 WLR 1189 (Super. Ct. 1989); Johnson v. United States, App. D.C., 616 A.2d 1216 (1992), cert. denied, 507 U.S. 996, 113 S. Ct. 1611, 123 L. Ed. 2d 172 (1993); Green v. Green, App. D.C., 642 A.2d 1275 (1994).

§ 16-1004. Petition; notice; temporary order.

(a) Upon a filing of a petition for civil protection by the Corporation Counsel or by a complainant, the Family Division shall set the matter for hearing, consolidating it, where appropriate, with other matters before the Family Division involving members of the same family.

(b) With respect to a petition for civil protection filed by the Corporation Counsel, the Family Division shall cause notice of the hearing to be served on the respondent, the complainant and, if appropriate, the family member endangered (or, if a child, the person then having physical custody of the child), the Director of Social Services, and the Corporation Counsel. The respondent shall be served with a copy of the petition together with the notice and shall be directed to appear at the hearing. The Family Division may also cause notice to be served on other members of the family whose presence at the hearing is necessary to the proper disposition of the matter.

(c) With respect to a petition for civil protection filed by a complainant himself or herself, the complainant, pursuant to the Rules of the Superior Court of the District of Columbia, shall cause notice of the hearing and a copy of the petition to be served upon the respondent and any other members of the family whose presence at the hearing is necessary to the proper disposition of the matter. Pursuant to the Rules of the Superior Court of the District of Columbia, the complainant shall also cause a subpoena to issue directing the respondent to appear at the hearing.

(d) If, upon the filing of a petition under oath, the Division finds that the safety or welfare of a family member is immediately endangered by the respondent, it may, ex parte, issue a temporary protection order of not more than 14 days duration and direct that the order be served along with the notice required by this section; provided, that a petition for civil protection be filed together with the petition for a temporary protection order and a hearing be commenced on the petition for civil protection prior to the expiration of the temporary protection order. (July 29, 1970, 84 Stat. 547, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1004; Sept. 14, 1982, D.C. Law 4-144, § 5, 29 DCR 3131.)

Legislative history of Law 4-144. — See note to § 16-1001.

Service of process sufficient. — Service of process is sufficient where petition and affidavit for a civil protection order served state that “the Petitioner asks the court that a hearing be set on this matter and that a Notice of Hearing and Order to Appear be issued to the Respon-

dent”; receipt of a document titled “Notice of Hearing and Order Directing Appearance” was not needed. *McKnight v. Scott*, App. D.C., 665 A.2d 973 (1995).

Cited in *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989); *Maldonado v. Maldonado*, App. D.C., 631 A.2d 40 (1993).

§ 16-1005. Hearing; evidence; protection order.

(a) Members of the family receiving notice shall appear at the hearing. In addition to the parties, the Corporation Counsel and the Director of Social Services may present evidence at the hearing in cases where the petition was filed by the Corporation Counsel.

(b) Notwithstanding section 14-306, in a hearing under this section, one spouse shall be a competent and compellable witness against the other and may testify as to confidential communications, but testimony compelled over a claim of a privilege conferred by such section shall be inadmissible in evidence in a criminal trial over the objection of a spouse entitled to claim that privilege.

(c) If, after hearing, the Family Division finds that there is good cause to believe the respondent has committed or is threatening an intrafamily offense, it may issue a protection order —

(1) directing the respondent to refrain from the conduct committed or threatened and to keep the peace toward the family member;

(2) requiring the respondent, alone or in conjunction with any other member of the family before the court, to participate in psychiatric or medical treatment or appropriate counseling programs;

(3) directing, where appropriate, that the respondent avoid the presence of the family member endangered;

(4) directing a respondent to refrain from entering or to vacate the dwelling unit of the complainant when the dwelling is (A) marital property of the parties; or (B) jointly owned, leased, or rented and occupied by both parties; provided, that joint occupancy shall not be required if a party is forced by the respondent to relinquish occupancy; or (C) owned, leased, or rented by the complainant individually; or (D) jointly owned, leased, or rented by the complainant and a person other than the respondent;

(5) directing the respondent to relinquish possession or use of certain personal property owned jointly by the parties or by the complainant individually;

(6) awarding temporary custody of a minor child of the parties;

(7) providing for visitation rights with appropriate restrictions to protect the safety of the complainant;

(8) awarding costs and attorney fees;

(9) ordering the Metropolitan Police Department to take such action as the Family Division deems necessary to enforce its orders;

(10) directing the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter; or

(11) combining two or more of the directions or requirements prescribed by the preceding paragraphs.

(c-1) For the purposes of subsection (c)(6) and (7) of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(d) A protection order issued pursuant to this section shall be effective for such period up to one year as the Family Division may specify, but the Family Division may, upon motion of any party to the original proceeding, extend, rescind, or modify the order for good cause shown.

(e) Any final order issued pursuant to this section and any order granting or denying extension, modification, or rescission of such order shall be appealable.

(f) Violation of any temporary or permanent order issued under this subchapter and failure to appear as provided in subsection (a) shall be punishable as contempt.

(g) Any person who violates any protection order issued under this subchapter shall be chargeable with a misdemeanor and upon conviction shall be punished by a fine not exceeding \$1,000 or by imprisonment for not more than 180 days, or both. (July 29, 1970, 84 Stat. 547, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1005; Sept. 14, 1982, D.C. Law 4-144, § 6, 29 DCR 3131; Aug. 25, 1994, D.C. Law 10-154, § 2(c), 41 DCR 4870; Mar. 21, 1995, D.C. Law 10-237, § 2(b), 42 DCR 36.)

Section references. — This section is referred to in § 4-136.

Effect of amendments. — D.C. Law 10-237 added (g).

Legislative history of Law 4-144. — See note to § 16-1001.

Legislative history of Law 10-154. — Law 10-154, the "Evidence of Intrafamily Offenses in Child Custody Cases Act of 1994," was introduced in Council and assigned Bill No. 10-7, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-270 and transmitted to both Houses of Congress for its review. D.C. Law 10-154 became effective on August 25, 1994.

Legislative history of Law 10-237. — See note to § 16-1001.

Issuance of protection order committed to discretion of court. — The determination of good cause permitting extension of a civil

protection order is committed to the sound discretion of the trial court which is subject to reversal only upon a showing of abuse of that discretion. *Maldonado v. Maldonado*, App. D.C., 631 A.2d 40 (1993).

Factors in issuing civil protection order.

— An interest in continuing child support payments is not necessarily dispositive on the question of whether a civil protection order should be extended; rather, it is a factor that must be taken into account, along with others, in making that determination. *Maldonado v. Maldonado*, App. D.C., 631 A.2d 40 (1993).

Husband's incarceration was a factor which may and should have been considered by the trial judge in determining the extension of a civil protection order (CPO); however, that factor could not be the sole determinant as to whether the CPO should or should not be extended. In relying upon the husband's incarceration as the sole basis for denying the extension of the CPO, the trial judge abused his

discretion. *Maldonado v. Maldonado*, App. D.C., 631 A.2d 40 (1993).

Prosecutor. — A private party may constitutionally file and prosecute a criminal contempt motion. *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989).

Respondents against whom contempt petitions are filed are afforded the entire range of protections a contemner has when proceeded against pursuant to the criminal rules, save one — the requirement of a public prosecutor, whether institutional or specially appointed, and such a provision is not constitutionally required in intrafamily cases, and would constitute a serious impediment to the prompt and efficient processing of intrafamily contempt motions with no obvious nor particularly necessary benefit in terms of fairness accruing to alleged contemnors. *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989).

Notice requirements. — The procedures associated with the institution of a contempt proceeding in an intrafamily case afford respondent sufficiently specific notice of his allegedly contemptuous conduct. *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989).

Insufficient record remanded for preparation of written statement of findings. — Where trial court order granting civil protection simply stated in a conclusory fashion that

it found that there was “good cause to believe” that defendant had committed an intrafamily offense but did not provide appellate court with findings sufficient to facilitate review, the Court of Appeals remanded the record of the case to the trial court with instructions to prepare a written statement of its findings, based upon the hearing already completed. *Thomas v. Thomas*, App. D.C., 477 A.2d 728 (1984).

Monetary relief. — Trial court has authority to grant monetary relief as part of civil protection order issued under Intrafamily Offenses Act. *Powell v. Powell*, App. D.C., 547 A.2d 973 (1988).

Permanent injunctions. — The Intrafamily Offenses Act does not authorize the issuance of permanent injunctions. *Cruz-Foster v. Foster*, App. D.C., 597 A.2d 927 (1991).

Cited in *Smoak v. Smoak*, 113 WLR 1265 (Super. Ct. 1985); *Sandoval v. Mendez*, App. D.C., 521 A.2d 1168 (1987); *Turner v. District of Columbia*, App. D.C., 532 A.2d 662 (1987); *Thompson v. Thompson*, App. D.C., 559 A.2d 311 (1989); *In re M.D.*, App. D.C., 602 A.2d 109 (1992); *Johnson v. United States*, App. D.C., 616 A.2d 1216 (1992), cert. denied, 507 U.S. 996, 113 S. Ct. 1611, 123 L. Ed. 2d 172 (1993); *United States v. Dixon*, 509 U.S. 688, 113 S. Ct. 2849, 125 L. Ed. 2d 556 (1993); *Green v. Green*, App. D.C., 642 A.2d 1275 (1994).

§ 16-1006. Dismissal of petition; notice.

The Family Division may dismiss a petition if the matter is not appropriate for disposition in the Family Division. (July 29, 1970, 84 Stat. 548, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1006; Sept. 14, 1982, D.C. Law 4-144, § 7, 29 DCR 3131.)

Legislative history of Law 4-144. — See 1209 (D.C. Cir. 1972); *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989).

Cited in *United States v. Harrison*, 461 F.2d

Subchapter II. Parental Kidnapping.

§ 16-1021. Definitions.

For the purposes of this subchapter, the term:

- (1) “Child” means a person under the age of 16 years of age.
- (2) “District” means the District of Columbia.

(3) “Lawful custodian” means a person who is authorized to have custody by an order of the Superior Court of the District of Columbia or a court of competent jurisdiction of any state, or a person designated by the lawful custodian temporarily to care for the child.

(4) “Relative” means a parent, other ancestor, brother, sister, uncle, or aunt, or one who has been lawful custodian at some prior time. (May 23, 1986,

D.C. Law 6-115, § 2, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(b), 36 DCR 492.)

Section references. — This section is referred to in §§ 16-911 and 16-914.

Legislative history of Law 6-115. — Law 6-115, the “Parental Kidnapping Prevention Act of 1985,” was introduced in Council and assigned Bill No. 6-311, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 11, 1986, and March 25, 1986, respectively. Signed by the Mayor on April 8, 1986, it was assigned Act No. 6-150 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-231. — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Cited in *Morgan v. Foretich*, App. D.C., 564 A.2d 1 (1989).

§ 16-1022. Prohibited acts.

(a) No parent, or any person acting pursuant to directions from the parent, may intentionally conceal a child from the child’s other parent.

(b) No relative, or any person acting pursuant to directions from the relative, who knows that another person is the lawful custodian of a child may:

(1) Abduct, take, or carry away a child with the intent to prevent a lawful custodian from exercising rights to custody of the child;

(2) Abduct, take, or carry away a child from a person with whom the relative has joint custody pursuant to an order, judgment, or decree of any court, with the intent to prevent a lawful custodian from exercising rights to custody to the child;

(3) Having obtained actual physical control of a child for a limited period of time in the exercise of the right to visit with or to be visited by the child or the right of limited custody of the child, pursuant to an order, judgment, or decree of any court, which grants custody of the child to another or jointly with the relative, with intent to harbor, secrete, detain, or conceal the child or to deprive a lawful custodian of the physical custody of the child, keep the child for more than 48 hours after a lawful custodian demands that the child be returned or makes all reasonable efforts to communicate a demand for the child’s return;

(4) Having custody of a child pursuant to an order, judgment, or decree of any court, which grants another person limited rights to custody of the child or the right to visit with or to be visited by the child, conceal, harbor, secrete, or detain the child with intent to deprive the other person of the right of limited custody or visitation;

(5) Conceal, harbor, secrete, or detain the child knowing that physical custody of the child was obtained or retained by another in violation of this subsection with the intent to prevent a lawful custodian from exercising rights to custody to the child;

(6) Act as an aider and abettor, conspirator, or accessory to any of the actions forbidden by this section;

(7) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining custody rights

to a child, take or entice the child outside of the District for the purpose of depriving a lawful custodian of physical custody of the child; or

(8) After issuance of a temporary or final order specifying joint custody rights, take or entice a child from the other joint custodian in violation of the custody order. (May 23, 1986, D.C. Law 6-115, § 3, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(c), 36 DCR 492.)

Section references. — This section is referred to in §§ 16-911, 16-914, 16-1023, and 16-1024.

Legislative history of Law 7-231. — See note to § 16-1021.

Legislative history of Law 6-115. — See note to § 16-1021.

§ 16-1023. Defense to prosecution; continuous offenses; expenses; jurisdiction.

(a) No person violates this subchapter if the action:

(1) Is taken to protect the child from imminent physical harm;

(2) Is taken by a parent fleeing from imminent physical harm to the parent;

(3) Is consented to by the other parent; or

(4) Is otherwise authorized by law.

(b) If a person violates § 16-1022 of this subchapter, the person may file a petition in the Superior Court of the District of Columbia that:

(1) States that at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child; and

(2) Seeks to establish custody, to transfer custody, or to revise or to clarify the existing custody order; except that if the Superior Court of the District of Columbia does not have jurisdiction over the custody issue, the person shall seek to establish, transfer, revise, or clarify custody in a court of competent jurisdiction.

(c) If a petition is filed as provided in subsection (b) of this section within 5 days of the action taken, exclusive of Saturdays, Sundays, and legal holidays, a finding by the court that, at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child is a complete defense to prosecution under this subchapter.

(d) A law enforcement officer may take a child into protective custody if it reasonably appears to the officer that any person is in violation of this subchapter and unlawfully will flee the District with the child.

(e) A child who has been detained or concealed shall be returned by a law enforcement officer to the lawful custodian or placed in the custody of another entity authorized by law.

(f) The offenses prohibited by this subchapter are continuous in nature and continue for so long as the child is concealed, harbored, secreted, detained, or otherwise unlawfully physically removed from the lawful custodian.

(g) Any expenses incurred by the District in returning the child shall be reimbursed to the District by any person convicted of a violation of this subchapter. Those expenses and costs reasonably incurred by the lawful

custodian and child victim as a result of a violation of this subchapter shall be assessed by the court against any person convicted of the violation.

(h) Any violation of this subchapter is punishable in the District, whether the intent to commit the offense is formed within or without the District, if the child was a resident of the District, present in the District at the time of the taking, or is later found in the District. (May 23, 1986, D.C. Law 6-115, § 4, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(d), 36 DCR 492.)

Section references. — This section is referred to in §§ 16-911 and 16-914.

Legislative history of Law 6-115. — See note to § 16-1021.

Legislative history of Law 7-231. — See note to § 16-1021.

Cited in *Morgan v. Foretich*, App. D.C., 546 A.2d 407 (1988), cert. denied, 488 U.S. 1007, 109 S. Ct. 790, 102 L. Ed. 2d 781 (1989).

§ 16-1024. Penalties.

(a) A person who violates any provision of § 16-1022 and who takes the child to a place within the District, or detains or conceals the child within the District of Columbia is guilty of a misdemeanor and on conviction is subject to fine not exceeding \$250 or performance of community service not exceeding 240 hours, or both.

(b) A person who violates any provision of § 16-1022 and who takes the child to a place outside the District or detains or conceals the child outside the District shall be punished as follows:

(1) If the child is out of the custody of the lawful custodian for not more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not exceeding \$1,000 or imprisonment for 6 months, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$250, or performance of community service not exceeding 240 hours, or imprisonment not exceeding 30 days, or a combination of all three.

(2) If the child is out of the custody of the lawful custodian for more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not exceeding \$5,000 or imprisonment for 1 year, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$500 or imprisonment not exceeding 60 days, or both. (May 23, 1986, D.C. Law 6-115, § 5, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(e), 36 DCR 492.)

Section references. — This section is referred to in §§ 16-911 and 16-914.

Legislative history of Law 6-115. — See note to § 16-1021.

Legislative history of Law 7-231. — See note to § 16-1021.

§ 16-1025. Prosecution by Corporation Counsel.

Prosecutions under this subchapter shall be brought in the Superior Court of the District of Columbia in name of the District by the Corporation Counsel. (May 23, 1986, D.C. Law 6-115, § 6, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(f), 36 DCR 492.)

Section references. — This section is referred to in §§ 16-911 and 16-914.

Legislative history of Law 6-115. — See note to § 16-1021.

Legislative history of Law 7-231. — See note to § 16-1021.

§ 16-1026. Expungement.

Any parent convicted in the Superior Court of the District of Columbia of violating any provision of this subchapter with respect to his or her child may apply to the court for an order to expunge from all official records all records relating to the conviction at such time that the parent's youngest child has reached the age of 18 years, provided that the parent has no more than 1 conviction for a violation of this subchapter at the time that the application for expungement is made. Any other person convicted of violating the provisions of this subchapter may apply to the court for an order to expunge all records relating to the conviction 5 years after the conviction, or at such time as the child has reached the age of 18 years, whichever shall later occur, provided that the person has no more than 1 conviction for violating any provision of this subchapter at the time that the application for expungement is made. (May 23, 1986, D.C. Law 6-115, § 7, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(g), 36 DCR 492.)

Section references. — This section is referred to in §§ 16-911 and 16-914.

Legislative history of Law 6-115. — See note to § 16-1021.

Legislative history of Law 7-231. — See note to § 16-1021.

Subchapter III. Domestic Violence.

§ 16-1031. Arrests.

(a) A law enforcement officer shall arrest a person if the law enforcement officer has probable cause to believe that the person:

(1) Committed an intrafamily offense that resulted in physical injury, including physical pain or illness, regardless of whether or not the intrafamily offense was committed in the presence of the law enforcement officer; or

(2) Committed an intrafamily offense that caused or was intended to cause reasonable fear of imminent serious physical injury or death.

(b) The law enforcement officer shall present the person arrested under subsection (a) of this section to the United States Attorney for charging under section 16-1002. (Apr. 30, 1991, D.C. Law 8-261, § 2(c)(2), 37 DCR 5001.)

Section references. — This section is referred to in § 23-581.

Legislative history of Law 8-261. — Law 8-261, the "District of Columbia Prevention of Domestic Violence Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-192, which was referred to the Committee

on the Judiciary. The Bill was adopted on first and second readings on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 18, 1990, it was assigned Act No. 8-239 and transmitted to both Houses of Congress for its review.

§ 16-1032. Records.

Any law enforcement officer who investigates an intrafamily offense shall file a written report of the incident with the District of Columbia Metropolitan Police force ("Police force"), including the law enforcement officer's disposition of the case. The Police force shall maintain the written report. (Apr. 30, 1991, D.C. Law 8-261, § 2(c)(2), 37 DCR 5001.)

Legislative history of Law 8-261. — See note to § 16-1031.

§ 16-1033. Civil liability.

A law enforcement officer shall not be civilly liable solely because he or she makes an arrest in good faith and without malice pursuant to this subchapter. (Apr. 30, 1991, D.C. Law 8-261, § 2(c)(2), 37 DCR 5001.)

Legislative history of Law 8-261. — See note to § 16-1031.

§ 16-1034. Training program.

(a) The Police force shall incorporate in its educational program for new law enforcement officers training in:

(1) The nature, dimension, and causes of intrafamily offenses;

(2) The legal rights and remedies available to a victim or perpetrator of an intrafamily offense;

(3) The services and facilities available to a victim or perpetrator of an intrafamily offense;

(4) The legal duties imposed on a police officer to enforce the provisions of this subchapter and to offer protection and assistance to a victim of an intrafamily offense; and

(5) Techniques for handling an intrafamily offense that minimize the likelihood of injury to the officer and promote the safety of the victim.

(b) The training shall stress the importance of enforcing the law against intrafamily offenses. The Police force may:

(1) Utilize the resources of any law enforcement agency or community organization; and

(2) Invite any community organization that provides counselling or assistance to victims of intrafamily offenses to help in planning and presenting the training program.

(c) At least 20 hours of basic training in responding to an intrafamily offense shall be required of any new law enforcement officer prior to the law enforcement officer's permanent appointment.

(d) Any currently employed law enforcement officer shall be required to participate in an 8-hour course designed to familiarize the law enforcement officer with the dynamics of intrafamily offenses. (Apr. 30, 1991, D.C. Law 8-261, § 2(c)(2), 37 DCR 5001.)

Legislative history of Law 8-261. — See note to § 16-1031.

CHAPTER 11. EJECTMENT AND OTHER REAL PROPERTY ACTIONS.

Subchapter I. Ejectment.

Sec.

- 16-1101. Parties defendant; joint tenants and tenants in common.
- 16-1102. Failure of tenant to give notice to landlord.
- 16-1103. Contents of complaint; adverse possession.
- 16-1104. Proof necessary.
- 16-1105. Legal title in mortgagee or trustee; possession.
- 16-1106. Performance of contract by vendee as precluding vendor from recovery.
- 16-1107. Several judgments against defendants occupying distinct parcels.
- 16-1108. Recovery of less than is claimed.
- 16-1109. Recovery of mesne profits and damages; separate count.
- 16-1110. Recovery, by landlord, of furniture, arrears in rent, and damages; separate counts.
- 16-1111. Separate action for rent or damages.
- 16-1112. Expiration of title pending suit; damages.
- 16-1113. Defense of adverse possession; enclosure.
- 16-1114. Verdict; judgment; costs; future actions.
- 16-1115. Conclusiveness of final judgment.
- 16-1116. Improvements; notice; good faith; directions to jury; measure of damages.
- 16-1117. New trial as to assessment.
- 16-1118. Judgment for damages in excess of improvements.
- 16-1119. Judgment when improvements and damages are equal.

Sec.

- 16-1120. Election of plaintiff if value of improvements exceeds damages.
- 16-1121. Judgment and writ of possession after payment for improvements.
- 16-1122. Judgment and writ of possession after tender of deed and defendant's refusal to pay.
- 16-1123. Judgment for defendant after plaintiff's refusal to pay excess or tender deed.
- 16-1124. Ejectment for non-payment of rent; time limitation on relief from judgment; set-off; dismissal upon payment.

Subchapter II. Proceedings to Discover the Death of a Tenant for Life.

- 16-1151. Petition by person entitled to claim; form and contents.
- 16-1152. Order to produce life tenant; service of order.
- 16-1153. Failure to produce as ordered; subsequent proceedings; commissioners; presumption of death; right of possession.
- 16-1154. Investigation outside the District; report to court; presumption of death; right to possession.
- 16-1155. Restoration of property to life tenant.
- 16-1156. Recovery of profits by person evicted.
- 16-1157. Preservation of life tenants' rights if living at time of return.
- 16-1158. Persons holding over after life estate; damages.

*Subchapter I. Ejectment.***§ 16-1101. Parties defendant; joint tenants and tenants in common.**

(a) A civil action based upon a cause of action in ejectment, may be brought against:

(1) the person actually occupying the premises claimed, either in person or by tenant; or

(2) both the claimant and his tenant, or other occupant claiming under him; or

(3) if the premises are not actually occupied, a person exercising acts of ownership thereon adversely to the plaintiff.

When a lessee is made a defendant at the suit of a party claiming against the title of the lessee's landlord, the landlord may appear and be made a party defendant in the place of his lessee.

Any person claiming to be in possession may, on motion, be admitted to defend the action.

(b) Joint tenants shall sue jointly in ejectment, but tenants in common may sue either jointly or separately, and any number of tenants in common, less than the whole number entitled, may sue jointly in reference to their undivided interests. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1; 1973 Ed., § 16-1101.)

Action in ejectment alternative to summary proceedings. — The traditional civil action in ejectment, brought in the regular Civil Division of Superior Court pursuant to this subchapter is an alternative to summary proceedings in the Landlord and Tenant

Branch. *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

Cited in *Sullivan v. Malarkey*, App. D.C., 392 A.2d 1057 (1978); *Martin v. Carter*, App. D.C., 400 A.2d 326 (1979).

§ 16-1102. Failure of tenant to give notice to landlord.

If a tenant, on whom a complaint in ejectment is served, fails to give notice thereof, without delay, to his landlord or the agent of the landlord, he shall forfeit and pay to the landlord the value of three years' full rent of the premises, to be recovered by a civil action. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1; 1973 Ed., § 16-1102.)

§ 16-1103. Contents of complaint; adverse possession.

In his complaint in ejectment, the plaintiff shall:

- (1) describe the premises claimed with reasonable certainty; and
- (2) set forth distinctly the nature and quantity of the estate claimed by him in the premises.

It is sufficient for the plaintiff to state, in addition, that:

- (1) he was possessed of the premises, and while he was so possessed the defendant entered wrongfully into possession thereof, and withholds the possession of the premises from the plaintiff, or wrongfully detains possession; or

- (2) the defendant is wrongfully exercising acts of ownership over the premises.

However, except as provided by this chapter, acts of ownership do not amount to an adversary possession, so as to make it necessary for the plaintiff to sue in order to avoid the bar of the statute of limitations. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1; 1973 Ed., § 16-1103.)

§ 16-1104. Proof necessary.

(a) Except as provided by subsection (b) of this section, in an action of ejectment it is sufficient to entitle the plaintiff to relief to show that he is entitled, as against the defendant, to the immediate possession of the premises claimed, and that the defendant is:

- (1) in possession of the premises, and is holding adversely to the plaintiff; or

(2) exercising acts of ownership over the premises, adversely to the plaintiff.

(b) In an action pursuant to this chapter by one or more joint tenants or tenants in common against their cotenants, the plaintiff shall be required to prove an actual ouster or some other act amounting to a denial of the plaintiff's title and his exclusion from the enjoyment of the property. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1; 1973 Ed., § 16-1104.)

§ 16-1105. Legal title in mortgagee or trustee; possession.

It is not a bar to the plaintiff's recovery in an action of ejectment that the legal title to the property claimed is outstanding in another as mortgagee or trustee under a mortgage or deed of trust to secure a debt, unless the mortgagee or trustee, or those claiming under him, has taken possession of the premises, or unless the defendant claims under the mortgagor or grantor in the deed of trust. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1; 1973 Ed., § 16-1105.)

§ 16-1106. Performance of contract by vendee as precluding vendor from recovery.

Where real property has been sold under a written contract executed by the vendor, and there has been such a performance of its terms by the vendee as would entitle him to a decree for a conveyance of the legal title, without condition, the vendor may not recover the property from the vendee. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1; 1973 Ed., § 16-1106.)

§ 16-1107. Several judgments against defendants occupying distinct parcels.

When it appears on the trial in an action of ejectment that some of the defendants occupy distinct parcels of the property claimed, in severalty, the plaintiff, if entitled to recover, may in the discretion of the court, have several judgments against the respective parties, according to the proof of occupancy. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1; 1973 Ed., § 16-1107.)

§ 16-1108. Recovery of less than is claimed.

The plaintiff, under a claim to certain described premises, may recover less than the whole property claimed, and, under a claim to an entire property, may recover an undivided part thereof. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1; 1973 Ed., § 16-1108.)

§ 16-1109. Recovery of mesne profits and damages; separate count.

(a) The plaintiff may embody in his complaint, in a separate count, a claim for the:

(1) mesne profits received by the defendant from the property sued for; or

(2) clear value of the use and occupation of the property sued for — extending to the time of the verdict, and also damages for waste or injury to the premises during that period.

(b) If the jury find for the plaintiff, they may, at the same time, find and assess the mense profits, or the value of the use and occupation and the amount of damages, specified by subsection (a) of this section. Except in the case provided for by section 16-1116, there shall be rendered, besides a judgment for the recovery of the property, a judgment against the defendant for the amount so found by the jury. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1; 1973 Ed., § 16-1109.)

Section references. — This section is referred to in § 16-1118.

Action in ejectment alternative to summary proceedings. — The traditional civil action in ejectment, brought in the regular Civil Division of Superior Court pursuant to this subchapter is an alternative to summary proceedings in the Landlord and Tenant Branch. *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

Landlord's choice of remedies. — If a

landlord elects to bring suit under this subchapter, he clearly would be authorized, by the express statutory provision of this section, to add a damages claim for the use and occupation value of the property, where he would not be entitled to a judgment of rent in arrears under § 45-1411. *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

Cited in *Sullivan v. Malarkey*, App. D.C., 392 A.2d 1057 (1978).

§ 16-1110. Recovery, by landlord, of furniture, arrears in rent, and damages; separate counts.

(a) In an action in ejectment against his tenant, a landlord may embody in his complaint, in separate counts, claims for:

- (1) furniture, if leased with the realty;
- (2) arrears of rent due at the termination of the tenancy;
- (3) double rent in cases authorized by this Code from the termination of the tenancy to the verdict for possession; and
- (4) damages for waste or injury to the premises or furniture during the defendant's occupancy of the premises and before commencement of the action.

(b) If the jury find for the landlord, they may, at the same time, find the amounts due for arrears of rent and for double rent and for damages, as provided by subsection (a) of this section, and judgment shall be rendered accordingly. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1; 1973 Ed., § 16-1110.)

§ 16-1111. Separate action for rent or damages.

The plaintiff in ejectment is not required to join his claim for rent or damages with his claim for the recovery of the land and his omission to do so does not prevent him from bringing his action for rent or damages separately. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1; 1973 Ed., § 16-1111.)

Jurisdiction to try possession despite pending suit for accounting. — There was no merit to a claim that the Landlord and

Tenant Division was without jurisdiction to issue an order for possession because a claim for accounting was still pending in the Civil

Division, where the only issue before the Landlord and Tenant Division was possession, no accounting was requested and a claim for a

money judgment was waived. *Watwood v. Yambrusic*, App. D.C., 389 A.2d 1362 (1978).

§ 16-1112. Expiration of title pending suit; damages.

If the title of the plaintiff in ejectment expires after the commencement of his action but before the trial, and but for the expiration he would have been entitled to recover, the verdict shall find the facts, and the plaintiff may recover his damages sustained by the wrongful withholding of the possession. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1; 1973 Ed., § 16-1112.)

§ 16-1113. Defense of adverse possession; enclosure.

In an action to recover vacant and unimproved lots of ground it is not necessary, in order to maintain the defense of adversary possession, to show that the premises in controversy had been enclosed; but if it appears that the property had been assessed for taxation to the defendant, or those under whom he claims, and that he or they had regularly paid the taxes on the property and were the only persons who had exercised control over the property for a period of fifteen years before the bringing of the action, the facts shall be the equivalent of possession by actual enclosure. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1; 1973 Ed., § 16-1113.)

Cross references. — As to action to quiet title, see § 16-3301.

§ 16-1114. Verdict; judgment; costs; future actions.

(a) In an action of ejectment, if the plaintiff's title is established by proof, the verdict of the jury shall be generally for the plaintiff as to the whole or part of the property or interest claimed in the complaint, as the case may be. If the plaintiff fails to make satisfactory proof of title, the verdict shall be for the defendant as to the whole or part of the property, as the case may be. The verdict may be for the plaintiff as to part and for the defendant as to other part thereof. Except as provided by this chapter, judgment shall be rendered according to the verdict.

(b) When it appears on the trial that the defendant did not wrongfully enter into possession of the property sued for, or exercise acts of ownership over the same adversely to the plaintiff, the verdict of the jury shall be that the defendant is not guilty. Thereupon, judgment shall be rendered in favor of the defendant against the plaintiff for the costs of the action, but the judgment is not a bar to a future action by the plaintiff against the defendant for the recovery of the property. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1; 1973 Ed., § 16-1114.)

Cited in *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1973 (Super. Ct. 1987).

§ 16-1115. **Conclusiveness of final judgment.**

A final judgment rendered in an action of ejectment is conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1; 1973 Ed., § 16-1115.)

Legislative intent. — The summary remedy for possession was adopted by Congress to make it clear that if the action brought did not sound in ejectment, the final judgment would

not determine title or be conclusive between the parties as to title unless pleaded by the defendant. *Davis v. Bruner*, App. D.C., 441 A.2d 992 (1982).

§ 16-1116. **Improvements; notice; good faith; directions to jury; measure of damages.**

In an action of ejectment, at any time before the trial, the defendant may give notice that if the verdict of the jury is in favor of the plaintiff's title the defendant will claim the benefit of permanent improvements that may have been placed on the property by the defendant or those under whom he claims, and offer evidence at the trial tending to show that he or those under whom he claims had peaceably entered into possession of the premises in controversy under a title which he or they had reason to believe and did believe to be good, and had erected valuable and permanent improvements on the property, which were begun in good faith before the commencement of the action. The court shall then direct the jury, in case they find in favor of the plaintiff's title and also find that the permanent improvements were made by the defendant, or those under whom he claims, under the circumstances described in this section, to assess the:

(1) damages of the plaintiff, being the clear value over and above taxes and necessary expenses of the use and occupation of the property, exclusive of the improvements, during the whole period of the occupation of the property to the date of the verdict, and any damage done to the property, by waste or otherwise, by the parties during the occupation;

(2) present value of any permanent improvements that may have been placed on the premises by the defendant or those under whom he claims; and

(3) present value of the property of the plaintiff without and exclusive of the improvements. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1; 1973 Ed., § 16-1116.)

Section references. — This section is referred to in §§ 16-1109, 16-1117, and 16-1118.

Good faith requirement. — The "good faith" requirement of this section does not exclude an objective "reason to believe" component, and the mere absence of demonstrated bad faith, irrespective of its knowledge of any adverse claim, justify a knowledgeable purchaser's decision to begin the improvements. *M.M. & G., Inc. v. Jackson*, App. D.C., 612 A.2d 186 (1992).

Bona fide purchasers. — A bona fide purchaser under a forged deed takes nothing from

that conveyance; however, even those who take from a forged instrument can receive an equitable lien for the value of improvements that were made by the purchaser in good faith, and this section provides the standards applicable to such a case. *M.M. & G., Inc. v. Jackson*, App. D.C., 612 A.2d 186 (1992).

Notice to purchasers. — Where notice given to purchaser was adequate to impose upon it the risk of proceeding with improvements on property later determined to be not its own, purchaser would not be compensated for improvements made by it after receiving

that notice. *M.M. & G., Inc. v. Jackson*, App. D.C., 612 A.2d 186 (1992).

§ 16-1117. New trial as to assessment.

Either party who feels aggrieved by the assessment provided for by section 16-1116, may, within four days after the verdict, move to set the assessment aside, and the court may, for good cause shown, set the verdict aside and order another jury to be empaneled in the cause to make a new assessment. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-567, § 1; 1973 Ed., § 16-1117.)

Purchasers in good faith. — A purchaser who acted in good faith in making her improvements, whom seller did provide with information concerning the adverse claim, and did not receive notice of suit until after the bulk of her improvements had been made, was entitled to

the present value of permanent improvements she made to the property less any damages as provided by this section and § 16-1118. *M.M. & G., Inc. v. Jackson*, App. D.C., 612 A.2d 186 (1992).

§ 16-1118. Judgment for damages in excess of improvements.

When the damages of the plaintiff, assessed as provided by section 16-1116, exceed the value of the permanent improvements as ascertained by the jury, the plaintiff shall be entitled to a judgment for the excess in like manner as directed by section 16-1109. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1; 1973 Ed., § 16-1118.)

Purchasers in good faith. — A purchaser who acted in good faith in making her improvements, whom seller did provide with information concerning the adverse claim, and did not receive notice of suit until after the bulk of her improvements had been made was entitled to

the present value of permanent improvements she made to the property less any damages as provided by this section and § 16-1117. *M.M. & G., Inc. v. Jackson*, App. D.C., 612 A.2d 186 (1992).

§ 16-1119. Judgment when improvements and damages are equal.

When the value of the improvements, ascertained as provided by this chapter, equal but do not exceed the plaintiff's damages, as found by the jury, the plaintiff shall be entitled to judgment only for the recovery of the property sued for and costs. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1; 1973 Ed., § 16-1119.)

§ 16-1120. Election of plaintiff if value of improvements exceeds damages.

If the value of the improvements referred to in this chapter is found by the jury to exceed the damages of the plaintiff, the plaintiff may elect either to pay to the defendant the amount of the excess or to demand of the defendant the value of the plaintiff's property, without the improvements, as fixed by the jury, and tender to the defendant a deed for the property, with all the plaintiff's

right, title, and interest therein. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1; 1973 Ed., § 16-1120.)

Section references. — This section is referred to in § 16-1122.

§ 16-1121. Judgment and writ of possession after payment for improvements.

When the plaintiff pays to the defendant, within the time fixed therefor by the court, or, in case of the defendant's refusal to accept the payment, pays into court for the defendant's use the amount of the excess of the value of the improvements over the damages of the plaintiff, the plaintiff shall be entitled forthwith to a judgment and writ of possession. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1; 1973 Ed., § 16-1121.)

§ 16-1122. Judgment and writ of possession after tender of deed and defendant's refusal to pay.

If the plaintiff tenders to the defendant a deed as provided by section 16-1120 and demands the value of his property without the improvements, as found by the jury, and the defendant fails or refuses to pay the value within the time fixed therefor by the court, the plaintiff shall, in like manner, be entitled to a judgment and writ of possession; and if the plaintiff is a minor, the court may authorize the deed to be executed by his guardian. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1; 1973 Ed., § 16-1122.)

§ 16-1123. Judgment for defendant after plaintiff's refusal to pay excess or tender deed.

If the plaintiff fails or refuses either to pay the defendant the excess of the value of the improvements over the amount of the plaintiff's damages, or, as provided by the chapter, to tender a deed to the defendant and accept from him the value of the plaintiff's property, exclusive of the improvements, the defendant may pay the value into court for the use of the plaintiff. Thereupon, the defendant shall be entitled to a judgment in his favor, but without costs, which judgment shall be a bar to any future action by the plaintiff against the defendant to recover the property for cause theretofore existing. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1; 1973 Ed., § 16-1123.)

§ 16-1124. Ejectment for non-payment of rent; time limitation on relief from judgment; set-off; dismissal upon payment.

(a) In a case between landlord and tenant, where one-half year's rent or more is in arrear and unpaid, and the landlord or lessor to whom the rent is due has the right by law, in default of a sufficiency of goods and chattels whereon to distrain for the satisfaction of the rent due, to re-enter for

non-payment of the rent, he may, without any formal demand or re-entry, commence a civil action in ejectment for the recovery of the demised premises.

(b) When a judgment is given for the plaintiff in an action pursuant to this section, and execution is had on the judgment, before the rent in arrear and costs of suit are paid, the lease of the property shall cease and be determined, unless the judgment is reversed on appeal or certiorari or, within six months after execution on the judgment, the defendant or a person who has succeeded to his interest, or a mortgagee of the lease or of any party thereof who was not in possession when final judgment was rendered, applies to the court for an order granting equitable relief from the judgment, which is subsequently granted.

(c) When possession of the property recovered has been delivered to the plaintiff under execution issued upon a judgment in an action pursuant to this section, and, in connection with the application for equitable relief from the judgment, the defendant or other person referred to in subsection (b) of this section, has, prior to or at the time of his application, paid or tendered to the plaintiff or his legal representative or successor in interest, or paid into court for the use of the person entitled thereto, the amount of rent in arrear, as stated in the judgment and costs of suit and all damages sustained by the plaintiff, the order for restoration of possession of the property to the person who made the payment shall provide for setting off the sum that the plaintiff has made, or that he might, without fraud, deceit, or willful neglect, have made, of the property, during his possession, against the rent accruing after the judgment was rendered, and for reimbursement to the applicant of the balance, if any, of the sum paid into court by him, after making the set-off prescribed by this subsection.

(d) At any time before the trial of an action pursuant to this section, the defendant may pay or tender to the plaintiff, or pay into court, the amount of all the rent then in arrear, and costs of suit. Thereupon, the action shall be dismissed. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1; 1973 Ed., § 16-1124.)

Common-law right of self-help abrogated. — A landlord's common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, and violation of tenant's right not to have his possession interfered with except by lawful

process gives rise to a cause of action in tort. *Mendes v. Johnson*, App. D.C., 389 A.2d 781 (1978).

Cited in *Lehndorff U.S.A. (Cent.) Ltd. v. 1330 19th St. Corp.*, 117 WLR 841 (Super. Ct. 1989).

Subchapter II. Proceedings to Discover the Death of a Tenant for Life.

§ 16-1151. Petition by person entitled to claim; form and contents.

(a) A person entitled to claim real property, after the death of another person who has a prior estate therein, may, not oftener than once a year, petition the court for an order directing the production of the tenant for life, as prescribed by this subchapter, by a person, named in the petition, against whom a civil

action in ejectment to recover the real property can be maintained if the tenant for life is dead, or, if there is no such person, by the guardian, trustee, or other person who has, or is entitled to, the custody of the person of the tenant for life, or the care of his estate.

(b) A petition prescribed by subsection (a) of this section shall be verified by the affidavit of the petitioner, and shall contain an averment that the petitioner has cause to believe that the person, upon whose life the prior estate depends, is dead, and that his or her death is being concealed by the person named in the petition. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1; 1973 Ed., § 16-1151.)

Section references. — This section is referred to in § 16-1152.

§ 16-1152. Order to produce life tenant; service of order.

Upon the presentation of the petition and affidavit prescribed by section 16-1151, the court shall issue an order to the person named in the petition to produce and show to the persons named in the order by the petitioner not exceeding two in number, at such time and place as the court directs, the person upon whose life the prior estate depends. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1; 1973 Ed., § 16-1152.)

Section references. — This section is referred to in § 16-1153.

§ 16-1153. Failure to produce as ordered; subsequent proceedings; commissioners; presumption of death; right of possession.

(a) If a person upon whom an order, as prescribed by section 16-1152, is served, refuses or neglects to produce the person upon whose life the prior estate depends in the manner provided by the order, the court shall order him to produce the person in court or before commissioners appointed by the court, at such time and place as the court directs. Two of the commissioners shall be nominated by the petitioner, and they shall serve at his expense. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. The commissioners appointed shall make and file with the court a return showing the results of their investigation and their conclusions.

(b) If the person upon whom the second order prescribed by subsection (a) of this section is served refuses or neglects to produce, in court, or before the commissioners, as the case may be, the person upon whose life the prior estate depends, it shall be presumed that the latter person is dead, and the court shall issue an order permitting the petitioner to take possession of the property, as if that person were actually dead. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1; 1973 Ed., § 16-1153.)

Section references. — This section is referred to in § 16-1154.

§ 16-1154. Investigation outside the District; report to court; presumption of death; right to possession.

If before, or at the time of, the presentation of the commissioners' return provided for by section 16-1153, or, where commissioners are not appointed, at any time before a final order is made, the party upon whom the first or second order is served presents to the court presumptive proof, by affidavit, that the person, whose death was in question, is, or lately was, at a place certain, without the District of Columbia, the petitioner, at his own expense, may send one or both of the persons named in the first order to view him. If the person concealing or suspected of concealing the person upon whose life the prior estate depends, or the fact of his death, refuses or neglects to produce him or to procure him to be produced to the personal view of the persons sent for that purpose, the persons sent to view him shall make a true return of the refusal or neglect to the court, and the return shall be filed in the court. Thereupon, it shall be presumed that the tenant for life is dead, and the court shall issue an order permitting the petitioner to take possession of the real property, as if that person were actually dead. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1; 1973 Ed., § 16-1154.)

§ 16-1155. Restoration of property to life tenant.

The possession of real property that has been awarded to a petitioner pursuant to this subchapter, upon the presumption of the death of the person upon whose life the prior estate depends, shall be restored, by an order of the court, to the person evicted, or to his heirs, or legal representatives, upon the petition of the latter, and proof, to the satisfaction of the court, that the person presumed to be dead is living. The proceedings upon such a petition are the same as those prescribed by this subchapter to be followed upon the petition of the person to whom possession is awarded. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1; 1973 Ed., § 16-1155.)

§ 16-1156. Recovery of profits by person evicted.

A person evicted, as prescribed by this subchapter, may, when the presumption upon which he is evicted is erroneous, maintain a civil action against the person who has occupied the property, or his executor or administrator, to recover the full profits of the property during the occupation, while the person, upon whose life the prior estate depends, is or was living. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1; 1973 Ed., § 16-1156.)

§ 16-1157. Preservation of life tenants' rights if living at time of return.

When a guardian, trustee, or other person holding an estate or interest determinable upon the life of another person, shows by affidavit or otherwise to the satisfaction of the court, that:

(1) he has used his utmost efforts to procure the tenant for life to appear in the court or elsewhere, according to the order of the court;

(2) he can not procure or compel him so to appear; and

(3) the tenant for life is or was living at the time of the return made and filed, as prescribed by this subchapter —

he may continue in the possession of the estate, and receive the rents and profits for and during the infancy of the infant, or for and during the life of any other person on whose life the estate or interest depends. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1; 1973 Ed., § 16-1157.)

§ 16-1158. Persons holding over after life estate; damages.

A guardian or trustee for an infant, or other person having an estate determinable upon life or lives, who, after the determination of the particular estate or interest, without the express consent of the person or persons who is or are next and immediately entitled thereto, holds over and continues in possession of the real property, is a trespasser. Any person entitled to the real property upon or after the determination of the particular estate or interest, or his executor or administrator, may recover in damages against the person so holding over, or his executor or administrator, the full value of the profits received during the wrongful possession. (Dec. 23, 1963, 77 Stat. 571, Pub. L. 88-241, § 1; 1973 Ed., § 16-1158.)

CHAPTER 13. EMINENT DOMAIN.

Subchapter I. General Provisions.

Sec.

- 16-1301. Jurisdiction of District Court.
- 16-1302. Assignment of judge for condemnation cases.
- 16-1303. Jurisdiction of Superior Court.

Subchapter II. Real Property for District of Columbia.

- 16-1311. Condemnation proceedings by District of Columbia.
- 16-1312. Juries for condemnation proceedings.
- 16-1313. Selection of jury; oath of jurors.
- 16-1314. Declaration of taking; contents; deposit; transfer of title; determination; interest.
- 16-1315. Distribution of money deposited on declaration of taking; judgment for deficiency or overpayment; execution.
- 16-1316. Time for surrender of possession under declaration of taking; adjustment of charges.
- 16-1317. Objections to jurors; appraisalment.
- 16-1318. Objections or exceptions to appraisalment; new jury.
- 16-1319. Payment of award; transfer of title.
- 16-1320. Fixing time for return of verdict.
- 16-1321. Abandonment of proceedings; liability.

Subchapter III. Excess Property for Development of Seat of Government.

- 16-1331. Acquisition of property in excess of needs.
- 16-1332. Sale of excess property; restrictions on use; fair market value; disposition of moneys.
- 16-1333. Notice of sale of excess property.
- 16-1334. Retention, for public use, of excess property.
- 16-1335. Availability of appropriations for purchase of excess property.
- 16-1336. Condemnation of excess real property by Mayor; payment of awards, damages, and costs; no assessments for benefits.

Sec.

- 16-1337. Construction of subchapter.

Subchapter IV. Real Property for United States.

- 16-1351. Definition.
- 16-1352. Condemnation proceedings by Attorney General.
- 16-1353. Declaration of taking; contents; deposit; transfer of title; determination; interest.
- 16-1354. Distribution of money deposited on declaration of taking; judgment for deficiency.
- 16-1355. Time for surrender of possession under declaration of taking; adjustment of charges.
- 16-1356. Setting date for trial.
- 16-1357. Drawing of jurors, and selection of jury; qualifications.
- 16-1358. Oath of jurors.
- 16-1359. Inspection of property by jury; presence of parties.
- 16-1360. Trial; evidence; measure of compensation.
- 16-1361. Verdict.
- 16-1362. Fixing date for new trial; new jurors.
- 16-1363. Judgment.
- 16-1364. Force and effect of judgment; payment.
- 16-1365. Appeal; deficiency judgment.
- 16-1366. Payment of compensation into court; vesting of title.
- 16-1367. Delivery of possession.
- 16-1368. Additional powers of court.

Subchapter V. Excess Property for the United States.

- 16-1381. Acquisition of property in excess of needs.
- 16-1382. Retention, for public use, of excess property.
- 16-1383. Availability of appropriations for purchases of excess property.
- 16-1384. Condemnation of excess real property by United States agencies; payment of awards, damages and costs.
- 16-1385. Construction of subchapter.

Subchapter I. General Provisions.

§ 16-1301. Jurisdiction of District Court.

The United States District Court for the District of Columbia has exclusive jurisdiction of all proceedings for the condemnation of real property authorized by subchapters IV and V of this chapter, with full power to hear and determine

all issues of law and fact that may arise in the proceedings. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(f)(1); 1973 Ed., § 16-1301.)

Cited in *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

§ 16-1302. Assignment of judge for condemnation cases.

The chief judge of the United States District Court for the District of Columbia shall assign from time to time, and for such periods as he determines, one of the judges of the court to hear cases involving the condemnation of real property in the District of Columbia. In case of the disability of the judge so assigned, or for any other reason, the chief judge may assign any judge of the Court for service in condemnation cases. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1; 1973 Ed., § 16-1302.)

§ 16-1303. Jurisdiction of Superior Court.

The Superior Court of the District of Columbia has jurisdiction of all proceedings for the condemnation of real property authorized by subchapters II and III of this chapter with full power to hear and determine all issues of law and fact that may arise in the proceedings. (July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(2); 1973 Ed., § 16-1303.)

Subchapter II. Real Property for District of Columbia.

§ 16-1311. Condemnation proceedings by District of Columbia.

When real property in the District of Columbia is needed by the Mayor of the District of Columbia for sites of schoolhouses, fire or police stations, rights-of-way for roads, highways, streets and alleys or parts thereof, rights-of-way for water mains or sewers, or any other authorized municipal use, and that property cannot be acquired by purchase from the owners thereof at a price satisfactory to the officers of the District authorized to negotiate for the property, a complaint may be filed in the Superior Court of the District of Columbia in the name of the District of Columbia for the condemnation of the property or rights-of-way and the ascertainment of its value. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(3); 1973 Ed., § 16-1311; Mar. 10, 1983, D.C. Law 4-201, § 501, 30 DCR 148; Apr. 30, 1988, D.C. Law 7-104, § 4(g), 35 DCR 147.)

Cross references. — As to condemnation of lands for parks, parkways and playgrounds, see § 1-2009.

As to alley dwellings and condemnation proceedings in relation thereto, see § 5-101.

As to condemnation proceedings to establish

building lines on streets, see § 5-203.

As to condemnation of insanitary buildings, see § 5-701 et seq.

As to acquisition of sites for refuse incinerators, see § 6-505.

As to condemnation of materials for making

or repairing public road, see § 7-331.

As to proceedings to close streets or alleys, see § 7-411 et seq.

As to condemnation of lands for streets and alleys, see § 7-442.

As to proceedings to acquire land for subways or viaducts, see § 7-1415.

As to condemnation proceedings by certain railroad companies, see § 7-1421.

As to condemnation of property for municipal center, see § 9-201.

As to expert witnesses in condemnation actions, see § 14-308.

As to assignment of judge in condemnation cases, see § 16-1302.

As to acquisition of property in excess of needs, see § 16-1331.

As to condemnation of land for United States, see § 16-1351 et seq.

As to acquisition of site for children's tuberculosis sanatorium, see § 32-112.

As to right to condemn, without compensation, property of telegraph companies in order to build and lay conduits, see § 43-1417.

As to acquisition of lands, easements and rights of ways for pipe lines, see § 43-1544.

Legislative history of Law 4-201. — Law 4-201, the "Street and Alley Closing and Acquisition Procedures Act of 1982," was introduced in Council and assigned Bill No. 4-341, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill

No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Editor's notes. — Section 4(g) of D.C. Law 7-104 purported to substitute "Mayor" for "Commissioner" apparently without regard to the amendment to this section by D.C. Law 4-201.

"For any other municipal use authorized by Congress." — Words "for any other municipal use authorized by Congress" are to be construed as widely as possible. *District of Columbia Fed'n of Civic Ass'ns v. Airis*, 275 F. Supp. 533 (D.D.C. 1967).

Statutes providing for condemnation of private property for public use must be strictly construed. — If any doubts exist as to the authority to proceed under such statutes, these doubts must be resolved in favor of the person whose property is sought to be taken. *Rollins Outdoor Adv., Inc. v. District of Columbia*, App. D.C., 434 A.2d 1384 (1981).

Specific authorization required. — The District must have specific authorization to condemn from Congress it cannot condemn simply because Congress has directed the District to perform some general function such as regulating outdoor advertising. *Rollins Outdoor Adv., Inc. v. District of Columbia*, App. D.C., 434 A.2d 1384 (1981).

Appropriations as enabling legislation. — Appropriations act may only serve as substantive enabling legislation when Congressional intent is clear. *Rollins Outdoor Adv., Inc. v. District of Columbia*, App. D.C., 434 A.2d 1384 (1981).

§ 16-1312. Juries for condemnation proceedings.

For purposes of this subchapter, a special jury list shall be prepared of not less than one hundred persons who are qualified jurors in the District of Columbia. When a jury is required for a condemnation proceeding under this subchapter, the names of such number of persons as may be necessary shall be selected from this list by lot and furnished to the Superior Court. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1; Mar. 27, 1968, 82 Stat. 63, Pub. L. 90-274, § 103(d); July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(4); 1973 Ed., § 16-1312.)

Section references. — This section is referred to in §§ 16-1313 and 16-1357.

§ 16-1313. Selection of jury; oath of jurors.

In each action brought pursuant to this subchapter, the court shall appoint, from among the persons whose names are drawn pursuant to section 16-1312, a jury of five capable and disinterested persons, and shall administer to the persons so drawn an oath or affirmation that they:

- (1) are not interested in any manner in the real property to be condemned;
- (2) are not related to the parties interested in the property; and
- (3) without favor or partiality, and to the best of their judgment, will appraise the value of the respective interests of all persons concerned in the property. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1; 1973 Ed., § 16-1313.)

§ 16-1314. Declaration of taking; contents; deposit; transfer of title; determination; interest.

(a) In an action pursuant to this subchapter, the plaintiffs may file in a cause, with the complaint or at any time before judgment, a declaration of taking, signed by the Mayor, declaring that the property is thereby taken for use of the District of Columbia. The declaration of taking shall contain or have annexed thereto a —

- (1) statement of the authority under which and the public use for which the property is taken;
- (2) description of the property taken sufficient for the identification thereof;
- (3) statement of the estate or interest in the property taken for public use;
- (4) plan showing the property taken; and
- (5) statement of the sum of money estimated by the Mayor to be just compensation for the property taken.

(b) Notwithstanding section 16-1319, upon the filing of the declaration of taking and the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, shall vest in the District of Columbia, and the property shall be deemed to be condemned and taken for the use of the District, and the right to just compensation therefor shall vest in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(5); 1973 Ed., § 16-1314; Apr. 30, 1988, D.C. Law 7-104, § 4(h), 35 DCR 147.)

Section references. — This section is referred to in §§ 16-1315 and 16-1316.

Legislative history of Law 7-104. — See note to § 16-1311.

§ 16-1315. Distribution of money deposited on declaration of taking; judgment for deficiency or overpayment; execution.

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16-1314, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency or overpayment in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure. A writ of execution may be issued on the judgment within the same time, and it shall have the same effect as a lien, and shall be executed and returned in the same manner, as if issued on any other judgment. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1; 1973 Ed., § 16-1315.)

§ 16-1316. Time for surrender of possession under declaration of taking; adjustment of charges.

Upon the filing of the declaration of taking provided for by section 16-1314, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiffs. The court may make such orders in respect of incumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1; 1973 Ed., § 16-1316.)

Government priority over proceeds. — Where private and public claims compete for the proceeds from a condemnation or tax sale, payment to the government takes priority over satisfaction of private interests. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land*, 589 F.2d 628 (D.C. Cir. 1978).

Confiscating agency subrogated to government's priority. — *Redevelopment Land Agency*, having satisfied a demolition assess-

ment against land acquired by it, was subrogated to the government's general priority as to condemnation proceeds and thus had priority over private mortgagee for sum required to reimburse the RLA for paying both the assessment and the interest which had accrued thereon. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land*, 589 F.2d 628 (D.C. Cir. 1978).

§ 16-1317. Objections to jurors; appraisalment.

The court, before accepting the jury in a condemnation proceeding pursuant to this subchapter, shall hear any objections that may be made to any member thereof, and may pass upon any objection, and may excuse any juror or cause any vacancy in the jury, when empaneled, to be filled. After the jury is organized and have viewed and examined the land and premises affected by the condemnation proceeding, they shall proceed, in the presence of the court, to hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding. When the

hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their appraisalment of the value of the interests of all persons, respectively, in the real property, where the appraisalment shall be recorded. In making their decision, the jury shall take into consideration, when a part only is taken, the benefit to the remainder of the tract, and shall give their appraisalment accordingly. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1; 1973 Ed., § 16-1317.)

Section references. — This section is referred to in §§ 16-1318 and 16-1319.

Right of landowner to testify. — So long as his opinion is not substantially based on his experience with an incomparable piece of prop-

erty, the landowner should be permitted to testify as to the value of his condemned property. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337 (D.C. Cir. 1976).

§ 16-1318. Objections or exceptions to appraisalment; new jury.

(a) Objections or exceptions to an appraisalment of the jury pursuant to section 16-1317 may be filed within twenty days after the return of the appraisalment to the court. The court shall hear and determine any objections or exceptions so filed, and may vacate and set aside the appraisalment, in whole or in part, when satisfied that it is unjust or unreasonable. If the appraisalment is vacated and set aside, the court shall order the necessary number of new persons selected from the special jury list and, from among the persons so selected, shall appoint a new jury of five capable and disinterested persons who shall proceed as in the case of the first jury. The appraisalment of the new jury shall be final when confirmed by the court.

(b) When an appraisalment is vacated in part, the residue thereof as to the property condemned is not affected thereby. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(6); 1973 Ed., § 16-1318.)

§ 16-1319. Payment of award; transfer of title.

If the appraisalment of the jury pursuant to section 16-1317 is not objected to by the parties interested, it shall be confirmed by the court, or, if the appraisalment of the new jury is confirmed by the court, the Mayor shall pay the amount awarded by the jury out of the appropriation made therefor or deposit it in the manner as directed by section 7-215 [7-214], and thereupon the title to the property condemned shall vest in the District of Columbia. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(7); 1973 Ed., § 16-1319; Apr. 30, 1988, D.C. Law 7-104, § 4(i), 35 DCR 147.)

Section references. — This section is referred to in § 16-1314.

Legislative history of Law 7-104. — See note to § 16-1311.

References in text. — Section 7-215, re-

ferred to in this section, and § 7-214, which was inserted in brackets in this section, were repealed by D.C. Law 4-201, §§ 21 and 19, respectively, effective March 10, 1983.

§ 16-1320. Fixing time for return of verdict.

In every case involving the condemnation of real property under this subchapter, at the close of the hearing thereof, the court shall fix a time in which the jury shall return its verdict or the report to the court the reasons why the verdict or appraisement can not be returned by the time fixed. The court has discretion to extend the time for the return of the verdict or appraisement. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1; 1973 Ed., § 16-1320.)

§ 16-1321. Abandonment of proceedings; liability.

In a condemnation proceeding pursuant to this subchapter, it is optional with the Mayor to abide by the verdict of the jury and occupy the property appraised by them, or, within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the proceeding. If the proceeding is abandoned, the court shall award to the owner or owners of the property involved therein such sum or sums as will in the opinion of the court reimburse the owner or owners for all reasonable costs and expenses, including reasonable counsel fees, incurred by him or them in the proceeding. The sum or sums so awarded constitute a judgment or judgments against the District of Columbia. An owner is not entitled to the reimbursement in any case where the proceeding is abandoned at the request, or with the consent, of the owner of the property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(7); 1973 Ed., § 16-1321.)

Subchapter III. Excess Property for Development of Seat of Government.

§ 16-1331. Acquisition of property in excess of needs.

In order to promote the orderly and proper development of the seat of government of the United States, the Mayor of the District of Columbia may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation, fee simple title to land or rights in, or on land, or easements or restrictions therein, within the District, for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardship to the owners of adjacent private property by depriving them of the beneficial use of their property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(8); 1973 Ed., § 16-1331; Apr. 30, 1988, D.C. Law 7-104, § 4(j), 35 DCR 147.)

Cross references. — As to sale of public lands, see § 9-401 et seq.

As to receipt of certified mail return receipts as prima facie evidence of delivery, see § 14-506.

Legislative history of Law 7-104. — See note to § 16-1311.

§ 16-1332. Sale of excess property; restrictions on use; fair market value; disposition of moneys.

(a) The Mayor of the District of Columbia may, with the consent of the Council in accordance with section 9-401, upon completion of public improvements:

(1) subdivide, and sell, at public or private sale, or exchange, any excess real property acquired pursuant to this subchapter; and

(2) to carry out such purposes, convey any property acquired in excess of that actually needed and which is not essential to the usefulness of the public works —

with such reservations concerning the future use and occupation of the property as, in the Mayor's discretion, may be necessary to protect the public improvements.

(b) Property sold under this section shall be sold at not less than the fair market value at the time sold, as determined by appraisalment of the assessor of the District of Columbia.

(c) Moneys received from sales or transfers of properties pursuant to this subchapter shall be covered into the Treasury of the United States to the credit of the revenues of the District of Columbia. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(9); 1973 Ed., § 16-1332; Apr. 30, 1988, D.C. Law 7-104, § 4(k), 35 DCR 147; Mar. 15, 1990, D.C. Law 8-96, § 6, 37 DCR 795.)

Section references. — This section is referred to in § 16-1333.

Legislative history of Law 7-104. — See note to § 16-1311.

Legislative history of Law 8-96. — Law 8-96, the "Disposal of District Owned Surplus Real Property Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-302, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 21, 1989, and December 19, 1989, respectively. Approved without the signature of the Mayor on January 18, 1990, it was assigned Act No.

8-148 and transmitted to both Houses of Congress for its review.

Disposal of surplus real property. — Section 2 of D.C. Law 8-96 provided that for the purposes of this act, the term "real property" means land titled in the name of the District of Columbia ("District") or in which the District has a controlling interest and includes all structures of a permanent character erected thereon or affixed thereto, any natural resources located thereon or thereunder, all riparian rights attached thereto, or any air space located above or below the property or any street or alley under the jurisdiction of the Mayor.

§ 16-1333. Notice of sale of excess property.

When excess real property is to be sold pursuant to section 16-1332, notice of not less than twenty days before the sale shall be published in a daily newspaper published in the District of Columbia, and notice shall be sent before the sale, by registered mail or by certified mail, to the last-known address of the persons listed on the records of the assessor of the District as the

owners of the property abutting on the property to be sold. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1; 1973 Ed., § 16-1333.)

§ 16-1334. Retention, for public use, of excess property.

When the authorities of the District of Columbia having jurisdiction of real property, rights, or easements acquired pursuant to this subchapter, elect to retain any of them for the use of the District, they may use the property, rights or easements for park, playground, highway, or alley purposes, or for any other lawful purpose that they deem advantageous or in the public interest. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(10); 1973 Ed., § 16-1334.)

§ 16-1335. Availability of appropriations for purchase of excess property.

When real property is purchased pursuant to this subchapter in excess of that needed for a particular project or improvement, appropriations available for the payment of the purchase price, costs, and expenses incident to the project or improvement may be used in the payment of the purchase price, costs, and expenses of excess real property purchased in connection with the project or improvement, as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1; 1973 Ed., § 16-1335.)

§ 16-1336. Condemnation of excess real property by Mayor; payment of awards, damages, and costs; no assessments for benefits.

(a) When, pursuant to this subchapter, excess real property is condemned by the Mayor, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter II of this chapter.

(b) Appropriations available for the payment of awards, damages, and condemnation proceedings pursuant to subchapter II of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings for the acquisition of excess real property, as provided by this subchapter.

(c) Appropriations available for the payment of awards, damages, and costs in condemnation proceedings pursuant to subchapter II of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings thereunder for the acquisition of excess real property as provided by this subchapter.

(d) In all cases where excess real property is condemned, assessments for benefits may not be levied by the jury in respect to the acquisition of the property. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(7); 1973 Ed., § 16-1336; Mar. 10, 1983, D.C. Law 4-201, § 502, 30 DCR 148; Apr. 30, 1988, D.C. Law 7-104, § 4(l), 35 DCR 147; Feb. 5, 1994, D.C. Law 10-68, § 20(a), 40 DCR 6311.)

Legislative history of Law 4-201. — See note to § 16-1311.

Legislative history of Law 7-104. — See note to § 16-1311.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of

Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Editor's notes. — Section 4(1)(3) — (6) of D.C. Law 7-104 purported to substitute "7-213" for "7-214", and "7-214" for "7-215" in subsection (a), "7-322" for "7-323" in subsections (a) and (c), and "7-301" for "7301" in subsection (c), apparently without regard to the amendment to this section by D.C. Law 4-201.

The reference in subsection (b) to "sections referred to by subsection (a)" has been rendered obsolete by amendments made in D.C. Law 4-201.

§ 16-1337. Construction of subchapter.

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the law or laws relating to the subdividing of lands in the District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(11); 1973 Ed., § 16-1337.)

Subchapter IV. Real Property for United States.

§ 16-1351. Definition.

As used in this subchapter, "acquiring authority" means the head of an executive department or agency of the United States, or other officer of the United States, or board or commission of the United States, authorized by law to acquire real property in the District of Columbia for the construction of public buildings or works, or for parks, parkways, public playgrounds, or other public purpose. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1; 1973 Ed., § 16-1351; Apr. 30, 1988, D.C. Law 7-104, § 4(m), 35 DCR 147.)

Section references. — This section is referred to in § 16-1352.

Legislative history of Law 7-104. — See note to § 16-1311.

§ 16-1352. Condemnation proceedings by Attorney General.

When, for the purposes specified by section 16-1351, it is deemed necessary or advantageous to do so, the acquiring authority may acquire real property in the District of Columbia in the name of the United States by condemnation under judicial process. The Attorney General of the United States, upon the request of the acquiring authority, shall institute a proceeding for the condemnation of the property in the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1; 1973 Ed., § 16-1352.)

Cross references. — As to condemnation of lands for alleys and streets, see § 7-442 et seq.

Cited in District of Columbia Redevelop-

ment Land Agency v. Dowdey, App. D.C., 618 A.2d 153 (1992).

§ 16-1353. Declaration of taking; contents; deposit; transfer of title; determination; interest.

(a) In an action pursuant to this subchapter, the plaintiff may file in the cause, with the complaint or at any time before judgment, a declaration of taking signed by the acquiring authority empowered by law to acquire the property described in the complaint, declaring that the property is thereby taken for the use of the United States. The declaration of taking shall contain or have annexed thereto a —

(1) statement of the authority under which and the public use for which the lands are taken;

(2) description of the lands taken sufficient for the identification thereof;

(3) statement of the estate or interest in the lands taken for public use;

(4) plan showing the lands taken; and

(5) statement of the sum of money estimated by the acquiring authority to be just compensation for the property taken.

(b) Upon the filing of the declaration of taking and of the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, vests in the United States of America, and the property shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation therefor vests in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1; 1973 Ed., § 16-1353.)

Section references. — This section is referred to in §§ 16-1354, 16-1355, and 16-1360.

“Just compensation” defined. — “Just compensation” is the value of the interest taken, i.e., the so-called “market value.” *Certain Land v. United States*, 355 F.2d 825 (D.C. Cir. 1965).

Vesting of right to just compensation. — The right to just compensation vests in those entitled to it, and that right is not restricted to lienholders about whom the condemnor has

notice on the date of filing a complaint for condemnation. *District of Columbia Redevelopment Land Agency v. Dowdey*, App. D.C., 618 A.2d 153 (1992).

Interest rate determined by statute is floor. — Where statutes set a rate of interest as just compensation for condemnation awards, courts have interpreted it to be a floor. *District of Columbia Redevelopment Land Agency v. Dowdey*, App. D.C., 618 A.2d 153 (1992).

§ 16-1354. Distribution of money deposited on declaration of taking; judgment for deficiency.

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16-1353, the court, upon the application of the parties in interest, may order that the money so deposited,

or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency in the manner provided by rule 71A(j) of the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1; 1973 Ed., § 16-1354.)

Cited in District of Columbia Redevelopment Land Agency v. Dowdey, App. D.C., 618 A.2d 153 (1992).

§ 16-1355. Time for surrender of possession under declaration of taking; adjustment of charges.

Upon the filing of a declaration of taking provided for by section 16-1353, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiff. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1; 1973 Ed., § 16-1355.)

Consequential losses. — “Consequential losses” are not compensable in federal condemnation proceedings. *Certain Land v. United States*, 355 F.2d 825 (D.C. Cir. 1965).

Tax liability is admissible. — The tax liability of the landowners for that portion of the year during which they have been deprived of the use of their property by condemnation is admissible as an element of damages. *District*

of Columbia v. Sussman, 352 F.2d 683 (D.D.C. 1965).

Rent on condemned property. — The government is entitled to a payment of rent on the condemned property where the former owner remains in possession and continues to manage it. *Certain Land v. United States*, 355 F.2d 825 (D.C. Cir. 1965).

§ 16-1356. Setting date for trial.

In a proceeding pursuant to this subchapter, after all defendants have been served with notice, and there has been return of service, as provided by rule 71A(d) of the Federal Rules of Civil Procedure, and after defendants have appeared or answered in the manner provided by rule 71A(e) thereof, either personally or by their guardians ad litem or other legal representatives, or are in default, the case shall be regarded as ready for trial, and, upon the application of any party to the proceeding, the court shall forthwith set an early date to be fixed by it, not less than ten nor more than twenty days from the date of the application, for the trial of the issues of law and fact raised in the case, and the ascertainment of the compensation or damages to be awarded for the taking of the property to be condemned. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1; 1973 Ed., § 16-1356.)

Section references. — This section is referred to in § 16-1357.

§ 16-1357. Drawing of jurors, and selection of jury; qualifications.

When the date for trial has been set, as provided by section 16-1356, the court shall order the names of a number of persons, not less than twenty, selected from the special jury list provided by section 16-1312, and the names of the persons selected shall be certified to the clerk of the United States District Court for the District of Columbia as a panel of prospective jurors. The persons so certified shall be thereupon summoned by the United States marshal for the District of Columbia to appear in the court on the day specially fixed for the trial of the cause. Before selecting or impaneling the jury, the court may cause a second, third, or other further list of prospective jurors to be drawn, certified and summoned in like manner. From the persons so certified and summoned, the court, after examination on oath and in open court as to their qualifications, shall select and impanel a jury of five capable and disinterested persons who have the qualifications of jurors as prescribed by law for the courts of the District of Columbia, and in addition thereto are not in the service or employment of the United States or of the District of Columbia. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1; Mar. 27, 1968, 82 Stat. 63, Pub. L. 90-274, § 103(e); July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(12); 1973 Ed., § 16-1357.)

Section references. — This section is referred to in §§ 16-1358, 16-1359, and 16-1362.

§ 16-1358. Oath of jurors.

The jurors selected and impaneled, as provided by section 16-1357, shall take an oath or affirmation, administered by the court, that they:

- (1) are not interested in any manner in the property to be condemned;
- (2) are not, to their knowledge, related to any person interested in the property; and
- (3) will, impartially and to the best of their judgment, ascertain, appraise, and award just compensation for the property to be condemned and taken in the proceeding. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1; 1973 Ed., § 16-1358.)

Section references. — This section is referred to in § 16-1359.

§ 16-1359. Inspection of property by jury; presence of parties.

After being selected, impaneled, and sworn, as provided by sections 16-1357 and 16-1358, and before hearing the evidence, the jury, in order to inspect the property to be acquired, shall be taken upon the property by the United States marshal at a time fixed by the court. All parties in interest, their attorneys, and representatives have the right to be present at the inspection. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1; 1973 Ed., § 16-1359.)

Section references. — This section is referred to in § 16-1360.

§ 16-1360. Trial; evidence; measure of compensation.

After the inspection provided for by section 16-1359, and the jury has returned to the court, the trial of the cause shall be proceeded with before the court and jury. Any person who has appeared in the cause claiming any right, title, interest, or estate in the land to be taken, or compensation on account of its taking, has the right to submit evidence concerning the value of the property, parcel by parcel, the nature and extent of his right, interest, or estate therein, and the compensation justly due for the taking of the property. A new structure or substantial alteration of a permanent nature, the purpose or natural effect of which is to enhance the value of the property to be taken, erected, or made thereon after the institution of the condemnation proceedings may not be taken into consideration in assessing and awarding compensation for the property. When the property to be valued has been taken by virtue of a declaration of taking, as provided by section 16-1353, it shall be valued for the purposes of compensation as of the date of the taking. When, by act of the owner or other party claiming to be entitled to compensation, the value of the property for the use for which it is to be taken has been diminished, as by cutting trees, excavating, grading, or otherwise altering its physical condition, allowance, if the plaintiff so elects, shall be made in assessing compensation for the diminution in value. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1; 1973 Ed., § 16-1360.)

§ 16-1361. Verdict.

At the close of the evidence in a proceeding pursuant to this subchapter, the court shall charge the jury and furnish them with a written form to be used in returning their verdict. The members of the jury may separate when not engaged in the consideration of their verdict. When the jury, or a majority thereof, have agreed upon their verdict they shall, through their foreman, so notify the court, which shall thereupon pass an order setting a day for the return of the verdict in open court. The verdict shall be in writing subscribed by the jurors concurring therein, and shall set forth, parcel by parcel, the compensation to be paid for the taking of the lands to be condemned. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1; 1973 Ed., § 16-1361.)

Section references. — This section is referred to in §§ 16-1362 and 16-1363.

§ 16-1362. Fixing date for new trial; new jurors.

If a verdict rendered pursuant to section 16-1361, or any award contained therein, is set aside or vacated, the court shall —

(1) grant a new trial with respect to the property as to which the verdict or award is set aside or vacated;

(2) fix a date for the new trial; and

(3) order a new panel of prospective jurors to be drawn, certified, or summoned as provided by section 16-1357.

The court shall then proceed with the cause as if a verdict or award had not been rendered. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1; 1973 Ed., § 16-1362.)

§ 16-1363. Judgment.

Judgment upon a verdict returned pursuant to section 16-1361 or any award contained therein shall be entered against the United States in favor of the parties entitled for the sums awarded as just compensation, respectively, for the property condemned for the use of the United States. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1; 1973 Ed., § 16-1363.)

§ 16-1364. Force and effect of judgment; payment.

A final judgment rendered against the United States pursuant to this subchapter has like force and effect as a money judgment rendered against the United States by the Court of Claims in a suit in respect of which the United States has expressly consented to be sued. The amount of the final judgment shall be paid out of any specific appropriation applicable to the case. If a specific appropriation does not exist, the judgment shall be paid in the same manner (except with respect to interest) as judgments rendered by the Court of Claims in cases under its general jurisdiction. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1; 1973 Ed., § 16-1364.)

§ 16-1365. Appeal; deficiency judgment.

A party aggrieved by a final judgment in a proceeding pursuant to this subchapter may appeal therefrom to the United States Court of Appeals for the District of Columbia Circuit. The appeal, or any bond or undertaking given therein, does not operate to prevent or delay the vesting of title to the property in the United States, but upon the filing of a declaration of taking, or, if a declaration of taking is not filed, upon payment to the party entitled, or deposit in the registry of the court, of the amount awarded by the judgment, title vests in the United States, saving to all parties their right to just compensation. If the compensation finally awarded and adjudged for the property exceeds the amount awarded and adjudged by the judgment appealed from, the court shall enter judgment for the deficiency with interest as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1; 1973 Ed., § 16-1365.)

Orders subject to review. — Order of possession allowing test boring in certain property is subject to review. Washington Metro. Area

Transit Auth. v. One Parcel of Land, 514 F.2d 1350 (D.C. Cir. 1975).

§ 16-1366. Payment of compensation into court; vesting of title.

Payment into the registry of the court for the use of the parties entitled of the sum adjudged to be just compensation for the property to be condemned and taken, or for any parcel thereof, or any interest therein, pursuant to this subchapter, constitutes payment of the compensation. Upon the payment, the plaintiff is entitled to an order declaring that the title to the property in respect of which the compensation is so paid is vested in the United States of America. The money so paid into the registry of the court shall be deemed to be vested in the persons owning or interested in the property, according to their respective estates and interest, and the money shall take the place and stand in lieu of the property condemned. The court, upon the application of the plaintiff or of any party in interest, may determine and direct who is entitled to receive payment of the money so paid into the registry, and, in its discretion, order a reference to the auditor of the court or a special master to ascertain the facts on which the determination and direction are to be made. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1; 1973 Ed., § 16-1366.)

Vesting of right of compensation. — The right to just compensation vests in those entitled to it, and that right is not restricted to lienholders about whom the condemnor has notice on the date of filing a complaint for condemnation. District of Columbia Redevelopment Land Agency v. Dowdey, App. D.C., 618 A.2d 153 (1992).

Attorney's lien. — Attorney had an enforceable attorney's lien on his former client's property, even though he filed suit against his former clients for his fee after the condemnor acquired title. District of Columbia Redevelopment Land Agency v. Dowdey, App. D.C., 618 A.2d 153 (1992).

§ 16-1367. Delivery of possession.

Where possession has not been awarded pursuant to a declaration of taking, and the adjudged compensation has been paid into the registry as directed by the judgment of the court and a certified copy of the judgment, with a certificate of the clerk of the court showing the payment, has been served upon the person in possession of the property, he shall, upon demand, deliver possession thereof to the plaintiff. If possession is not delivered when so demanded, the plaintiff may apply to the court without notice, unless the court requires notice to be given, for a writ of assistance, and the court, upon proof of the service of the copy of the final order or judgment and certificate of the clerk showing payment as referred to in this section, shall thereupon cause the writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1; 1973 Ed., § 16-1367.)

§ 16-1368. Additional powers of court.

Where the mode or manner of conducting a proceeding pursuant to this subchapter is not expressly provided for by law or rules of court in force under authority of law, the court may make all necessary orders and give all necessary directions to carry into effect the object and intent of this subchapter

or any other laws conferring authority to acquire real property for the use of the United States. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1; 1973 Ed., § 16-1368.)

Subchapter V. Excess Property for the United States.

§ 16-1381. Acquisition of property in excess of needs.

In order to promote the orderly and proper development of the seat of government of the United States, agencies of the United States authorized by law to acquire real property, may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation fee simple title to land (or rights in or on land or easements or restrictions therein) within the District of Columbia for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness, to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardships to the owners of adjacent private property by depriving them of the beneficial use of their property. (July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13); 1973 Ed., § 16-1381.)

§ 16-1382. Retention, for public use, of excess property.

When the authorities of the United States having jurisdiction of real property (or rights or easements) acquired pursuant to this subchapter, elect to retain any of them for the use of the United States, they may use the property (or rights or easements) for park, playground, highway, or alley purposes, or for any other lawful purposes that they deem advantageous or in the public interest. (July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13); 1973 Ed., § 16-1382.)

§ 16-1383. Availability of appropriations for purchases of excess property.

When real property is purchased pursuant to this subchapter in excess of that needed for a particular project or improvement, appropriations available for the payment of the purchase price, costs, and expenses incident to the project or improvement may be used in the payment of the purchase price, costs, and expenses of excess real property purchased in connection with the project or improvement, as provided by this subchapter. (July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13); 1973 Ed., § 16-1383.)

§ 16-1384. Condemnation of excess real property by United States agencies; payment of awards, damages and costs.

(a) When excess real property is condemned by agencies of the United States as provided by this subchapter, the condemnation proceedings for the

acquisition of the property shall be in accordance with subchapter IV of this chapter, or any laws in effect at the time of the commencement of condemnation proceedings for the acquisition of real property in the District of Columbia for the use of the United States.

(b) Appropriations available for the condemnation of property pursuant to subchapter IV of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings pursuant to that subchapter for the acquisition of excess real property as provided in this subchapter. (July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13); 1973 Ed., § 16-1384.)

§ 16-1385. Construction of subchapter.

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the laws relating to the subdividing of lands in the District of Columbia. (July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13); 1973 Ed., § 16-1385.)

CHAPTER 15. FORCIBLE ENTRY AND DETAINER.

Sec.

16-1501. Definition; summons.

16-1502. Service of summons.

16-1503. Judgment and execution for possession.

Sec.

16-1504. [Repealed].

16-1505. Conclusiveness of judgment.

§ 16-1501. Definition; summons.

When a person detains possession of real property without right, or after his right to possession has ceased, the Superior Court of the District of Columbia, on complaint under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts, may issue a summons in English and Spanish to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(g)(1); 1973 Ed., § 16-1501; June 29, 1984, D.C. Law 5-90, § 2(a), 31 DCR 2537.)

Cross references. — As to rules used by Superior Court, see § 11-946.

As to forcible entry and detainer, see § 22-3101.

As to creation of estates by sufferance, see § 45-220.

As to action of ejectment, see § 45-1410.

Section references. — This section is referred to in §§ 15-318, 16-1502, and 45-2559.2.

Legislative history of Law 5-90. — Law 5-90, the "Eviction Procedures Act of 1984," was introduced in Council and assigned Bill No. 5-134, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-131 and transmitted to both Houses of Congress for review.

Congressional intent. — The summary remedy for possession was adopted by Congress to make it clear that if the action brought did not sound in ejectment, the final judgment would not determine title or be conclusive between the parties as to title unless pleaded by the defendant. *Davis v. Bruner*, App. D.C., 441 A.2d 992 (1982).

Purpose of chapter. — The purpose of this chapter is to provide relief to the landlord, to avoid a resort to self-help and force, and to permit an expeditious judicial determination of the right to possession. *Tutt v. Doby*, 459 F.2d 1195 (D.C. Cir. 1972).

Determination of title. — Action under this section normally does not try title. *Davis v. Bruner*, App. D.C., 441 A.2d 992 (1982).

Eviction of roomers. — A summary proceeding, provided for in this section is the

exclusive way to evict roomers without giving rise to a cause of action in tort. *Samuel v. King*, 118 WLR 2753 (Super. Ct. 1990).

Abrogation of common-law right of self-help. — Landlord's common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, and violation of a tenant's right not to have his possession interfered with except by lawful process gives rise to a cause of action in tort. *Mendes v. Johnson*, App. D.C., 389 A.2d 781 (1978); *Mahdi v. Poretzky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

Right of self-help abrogated with regard to commercial tenancies. — The landlord's common-law right of self-help is abrogated and the legislatively-created remedies for reacquiring possession are exclusive with regard to commercial tenancies as well as residential tenancies. *Simpson v. Lee*, App. D.C., 499 A.2d 889 (1985).

Right-to-enter lease provision. — And right-to-enter provision in lease does not relieve lessor of obligation to comply with statutory remedies in this section and § 45-1410 upon default of payment of rent because of a former tenant's claim to the leased premises. *Simpson v. Lee*, App. D.C., 499 A.2d 889 (1985).

Right to remain on premises. — Tenant's right to remain on landlord's premises is dependent on his payment of rent. *Mahdi v. Poretzky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

Jurisdiction over vessel used as residence. — An agreement under which a family uses a moored vessel as a residence is essentially "nonmaritime" in purpose and objective; therefore, the Superior Court has the power to direct a seizure of the vessel for nonpayment of

rent. *Greenway v. Buzzard Point Boatyard Corp.*, App. D.C., 217 A.2d 599 (1966).

Landlord and Tenant Branch jurisdiction. — A complaint for possession of realty, which was brought under this section and § 45-1409 by the personal representative of an estate to obtain possession of real property from relatives of the deceased, was within the jurisdiction of the Landlord and Tenant Branch of the Superior Court and should not have been dismissed. *Estate of Ellis ex rel. Clark v. Hoes*, App. D.C., 677 A.2d 50 (1996).

Retaliatory eviction prohibited. — The landlord is not free to evict a tenant in retaliation for his report of a housing code violation. *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016, 89 S. Ct. 618, 21 L. Ed. 2d 560 (1969).

Effect of infractions of housing regulations. — Where, from the beginning of the occupancy, there are serious infractions of the housing regulations, this has the effect of nullifying the lease as a binding contract and is viewed as a breach of the landlord's implied warranty of habitability, entitling the tenant to at least a partial abatement of rent for any continued occupancy. *Cooks v. Fowler*, 459 F.2d 1269 (D.C. Cir. 1971).

Breach of duty to protect premises as justification to withhold rent. — A lessee cannot assert that his failure to pay rent is justified on the theory that the lessor breached its duty to protect the premises where the lessee does not allege or proffer that the lessor reduced the protective measures in force at the time he entered into possession. *Dietz v. Miles Holding Corp.*, App. D.C., 277 A.2d 108 (1971).

Nonowner fails to acquire title through repairs and payments alone. — A party who makes repairs on the premises and who makes monthly payments on a note on which the landowner is the sole obligor does not acquire, individually or jointly, a legal or equitable title to the property. *Franklin v. Phoenix*, App. D.C., 294 A.2d 483 (1972).

Effect of vacation of premises. — Where tenants vacate between filing of complaint and trial date case becomes moot. *Dietz v. Miles Holding Corp.*, App. D.C., 277 A.2d 108 (1971); *Atkins v. United States*, App. D.C., 283 A.2d 204 (1971).

Where tenant yields possession, delay to litigate issue of rent is not justified, for that issue should be litigated separately and de novo. *Tutt v. Doby*, 459 F.2d 1195 (D.C. Cir. 1972).

Preliminary injunction improper where other remedies available. — Where other remedies are available, a preliminary injunction which directs that future rent be deposited into the Court is improper. *Dorfmann v. Boozer*, 414 F.2d 1168 (D.C. Cir. 1969).

Nature of protective order. — The protective order constitutes a considered judicial at-

tempt to balance the equities and to accommodate the competing considerations inherent in landlord-tenant controversies. *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

Right to protective order. — A protective order which requires the tenant to pay any future rent into the Court may issue only where the landlord demonstrates an obvious need for such protection, and the right to such an order must be adjudged independently from any other issues. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970).

Procedural requirements for protective order. — A protective order should be made only on the motion by the landlord, and only after notice and opportunity for a hearing on such a motion, including opportunity for oral argument and presentation of evidence, is afforded both parties. *Cooks v. Fowler*, 459 F.2d 1269 (D.C. Cir. 1971).

Although the Court may, in the exercise of its equitable jurisdiction, order that any future rent be paid as it becomes due during the pendency of the litigation, such prepayment should be ordered only upon a motion by the landlord and after notice and opportunity for oral argument is afforded both parties. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970).

Landlord must demonstrate need for order. — Burden of demonstrating a need for a protective order is on the landlord. *Blanks v. Fowler*, 459 F.2d 1282 (D.C. Cir. 1971).

Formulation of orders. — Formulation of protective orders, including setting of deposit amounts, is the responsibility of the judge. *Cooks v. Fowler*, 459 F.2d 1269 (D.C. Cir. 1971).

Proceedings are summary. — Proceedings in Landlord and Tenant Branch are of summary nature and time is of the essence. *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

Summary proceedings permitted when tenant fails to comply with protective order. — If the tenant in a landlord-tenant controversy fails to comply with an order for protective payments, the trial court may dispose of the action on the merits without a hearing on the merits. *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

Amount of rent constitutes upper limit of security deposit. — In fashioning a protective order, the amount of rent specified in the lease constitutes the upper limit of any required security deposit. *Cooks v. Fowler*, 459 F.2d 1269 (D.C. Cir. 1971).

Prior rents accrued. — Pretrial protective order cannot require payment of rent accruing prior to its entry. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970); *Cooks v. Fowler*, 459 F.2d 1269 (D.C. Cir. 1971).

Pending proceeding to challenge rent increase. — Where proceeding seeking review of, or otherwise challenging, rent increase is pending, the trial court should either stay the possessory action pending the administrative determination of the validity of the rent increase or, at the option of landlord, proceed with the trial on the basis of the rent less the challenged increase. *Drayton v. Poretsky Mgt., Inc.*, App. D.C., 462 A.2d 1115 (1983).

Inability to pay is no defense to nonpayment possessory action. — Inability to pay rent because of poverty or lack of funds is not a defense to a possessory action based on nonpayment. *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

Entitlement to pretrial protective fund upon conclusion of litigation. — After the conclusion of the litigation, the Court may make a finding as to the amount of rent due, even where the suit is not for back rent, and if the landlord is exonerated of all housing code violations, any pretrial protective fund may be paid to the landlord. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970).

If it is determined that housing code violations have nullified the obligation of the tenant to pay any rent, he may recover any pretrial protective fund. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970).

Statutory right to jury trial. — A party in a landlord-tenant case has no statutory right to a jury trial if his action is predicated on nonpayment of rent or some other breach of the lease and the only remedy sought is repossession. *Parnell v. Southall Realty*, App. D.C., 294 A.2d 490 (1972); *Amberger & Wohlfarth, Inc. v. District of Columbia*, App. D.C., 300 A.2d 460 (1973).

Constitutional right to jury trial. — Any party involved in an action for possession of real property is entitled, under the Seventh Amendment, to a trial by jury. *Pernell v. Southall Realty*, 416 U.S. 363, 94 S. Ct. 1723, 40 L. Ed. 2d 198 (1974).

Right to amend pleadings. — Either the landlord or the tenant should be permitted to amend his complaint or answer at any time before trial to allege a change in the condition of the premises. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925, 91 S. Ct. 186, 27 L. Ed. 2d 185 (1970).

Pleading claims for possession and rent. — When a claim for rent due is added to a complaint for possession, the tenant will be allowed to assert a counterclaim. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970).

Once action for possession is final, claim for rent may not be added. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970).

Laches. — Equitable defense of laches is inapplicable in an action for possession. *National Capital Hous. Auth. v. Douglas*, App. D.C., 333 A.2d 55 (1975), overruled on other grounds, *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

Tenant's right not barred by res judicata or collateral estoppel. — Where a temporary restraining order to prevent plaintiff's ouster from a house was obtained and subsequently vacated upon the consent of both parties, the merits of the case were not litigated, so the dismissal without prejudice did not have res judicata effect; what legal rights, if any, plaintiff might have had because defendants threw her out by getting the police to tell her that she had to leave, were not barred by res judicata or collateral estoppel. *Morgan v. Barry*, 785 F. Supp. 187 (D.D.C. 1992).

Applicability of res judicata. — For all practical purposes a decision for the landlord in an action for possession determines, by the principle of res judicata, all other matters at issue between the parties. *Atkins v. United States*, App. D.C., 283 A.2d 204 (1971).

Even where a default judgment is entered in an action for possession where the tenant has paid future rent into the court, this judgment is not res judicata for the amount of rent actually due. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970).

Applicability of collateral estoppel. — The issue of whether a default judgment entered against a tenant in a landlord's suit for possession is conclusive as to the issues litigated and determined therein in any subsequent suit for rent involves the application of the doctrine of collateral estoppel. *Tutt v. Doby*, 459 F.2d 1195 (D.C. Cir. 1972).

Where, in an action for possession, the issue of rent due is not genuinely before the Court, the tenant is not collaterally estopped from litigating this issue in a subsequent action by the landlord to recover rent. *Tutt v. Doby*, 459 F.2d 1195 (D.C. Cir. 1972).

Once the tenants successfully move to have an action for possession dismissed as moot, they are thereafter equitably estopped from later asserting a claim to an entitlement to possession. *Atkins v. United States*, App. D.C., 283 A.2d 204 (1971).

Court appointed receiver not "person aggrieved" for purposes of this section. — A receiver appointed by the Court pursuant to § 43-543(a)(4) is not an agent of the owner but is, instead, a representative of the Court and not "the person aggrieved" within the meaning of established law in a proceeding under this section. *Shannon & Luchs Co. v. Jeter*, App. D.C., 469 A.2d 812 (1983).

Requirement for stay of execution. — All accrued and overdue rent must be unconditionally tendered before any stay of execution of a

judgment in an action for possession can issue. *National Capital Hous. Auth. v. Douglas*, App. D.C., 333 A.2d 55 (1975), overruled on other grounds, *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

Mortgagor holding over. — Court declined to shield mortgagor holding over after foreclosure from an action under this chapter. *Simpson v. Jack Spicer Real Estate, Inc.*, App. D.C., 396 A.2d 212 (1978).

Cited in *Cooks v. Fowler*, 437 F.2d 669 (D.C. Cir. 1970), supplemental opinion, 455 F.2d 1281 (D.C. Cir. 1971); *Edwards v. Woods*, App. D.C., 385 A.2d 780 (1978); *Hall v. C & P Tel. Co.*, 793 F.2d 1354 (D.C. Cir. 1986); *Kariuki v. Brown*, 116 WLR 601 (Super. Ct. 1988); *Lennon v. United States Theatre Corp.*, 920 F.2d 996 (D.C. Cir. 1990).

§ 16-1502. Service of summons.

The summons provided for by section 16-1501 shall be served seven days, exclusive of Sundays and legal holidays, before the day fixed for the trial of the action. If the defendant has left the District of Columbia, or cannot be found, the summons may be served by delivering a copy thereof to the tenant, or by leaving a copy with some person above the age of sixteen years residing on or in possession of the premises sought to be recovered, and if no one is in actual possession of the premises, or residing thereon, by posting a copy of the summons on the premises where it may be conveniently read. If the summons is posted on the premises, a copy of the summons shall be mailed first class U.S. mail, postage prepaid, to the premises sought to be recovered, in the name of the person known to be in possession of the premises, or if unknown, in the name of the person occupying the premises, within 3 calendar days of the date of posting. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1; 1973 Ed., § 16-1502; June 29, 1984, D.C. Law 5-90, § 2(b), 31 DCR 2537.)

Section references. — This section is referred to in § 15-318.

Legislative history of Law 5-90. — See note to § 16-1501.

Personal service on tenant required. — Tenant who is sued for rent due must be served personally. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970).

Resident manager employed by the landlord is not a person residing on or in possession of the premises for the purpose of serving a landlord and tenant complaint. *Westmoreland v. Weaver Bros.*, App. D.C., 295 A.2d 506 (1972).

Service by posting. — Service of a summons and complaint by posting under the conditions specified in this section does not constitute a denial of due process. *Westmoreland v. Weaver Bros.*, App. D.C., 295 A.2d 506 (1972).

A landlord who knows that a tenant is outside the District and who has been unsuccessful in finding anyone else residing in or in possession of the premises may not resort to posting where he has actual knowledge of the place where the defendant may be found outside the District, and where his inability to locate anyone residing on the premises raises a good likelihood that the premises are in fact vacant and that posting and mailing notice thereof to that address will be ineffective in providing

notice. *Frank Emmet Real Estate, Inc. v. Monroe*, App. D.C., 562 A.2d 134 (1989).

Posting is the least preferred form of service. *Alexander v. Polinger Co.*, App. D.C., 496 A.2d 267 (1985).

While this section permits posting at the tenant's premises as well as personal service and substituted service on a person residing therein above the age of 16, posting is the least favored form of service and used only where attempts at personal or substituted service have failed. *Parker v. Frank Emmet Real Estate*, App. D.C., 451 A.2d 62 (1982).

Due diligence requirement. — This section requires due diligence on part of process server. *Parker v. Frank Emmet Real Estate*, App. D.C., 451 A.2d 62 (1982); *Alexander v. Polinger Co.*, App. D.C., 496 A.2d 267 (1985).

Although this section does not expressly so require, it is a prerequisite to posting that a "diligent and conscientious effort" be made by the process server to either find the defendant to effect personal service or to leave a copy of the summons with a person "residing on or in possession of the premises." *Frank Emmet Real Estate, Inc. v. Monroe*, App. D.C., 562 A.2d 134 (1989).

The judicially-construed requirement of diligence was designed to prevent the commence-

ment of actions for possession where further efforts on the part of the process server could have avoided utilization of the least preferred method of effective service of process. *Parker v. Frank Emmet Real Estate*, App. D.C., 451 A.2d 62 (1982).

Evidence of actual receipt irrelevant where substituted service used. — Evidence of the tenant's actual receipt of notice is irrelevant in a case where the landlord resorts to substituted service. *Parker v. Frank Emmet Real Estate*, App. D.C., 451 A.2d 62 (1982).

Tenant's testimony as to improper service must be assessed. — In deciding whether or not to vacate a default judgment for possession, it is incumbent upon the Court to hear and assess the testimony of the tenant who asserts she did not receive a complaint. *Bevins v. Lewis*, App. D.C., 254 A.2d 404 (1969); *Eaddy v. United States*, App. D.C., 276 A.2d 232 (1971).

§ 16-1503. Judgment and execution for possession.

When, upon a trial in a proceeding pursuant to this chapter, it appears that the plaintiff is entitled to the possession of the premises, judgment and execution for the possession shall be awarded in his favor, with costs; and if the plaintiff becomes nonsuit or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1; 1973 Ed., § 16-1503.)

Section references. — This section is referred to in § 15-318.

Court not empowered to adjudicate all conflicting claims. — The power of the Court to assess the amount of rent owed in an action for possession does not give rise to any expanded authority to adjudicate all the conflicting claims between the landlord and the tenant. *Winchester Mgt. Corp. v. Staten*, App. D.C., 361 A.2d 187 (1976).

Court appointed receiver not "person aggrieved" for purposes of § 16-1501. — A receiver appointed by the Court pursuant to § 43-543(a)(4) is not an agent of the owner but is, instead, a representative of the Court and not "the person aggrieved" within the meaning

of established law in a § 16-1501 proceeding. *Shannon & Luchs Co. v. Jeter*, App. D.C., 469 A.2d 812 (1983).

Costs must be specifically awarded. — Because a cost could be awarded, or would be automatically awarded upon request by the Court, it does not follow that a prevailing party can unilaterally calculate its post-judgment expenditures and demand such payment from the party against whom costs are assessed. *Johnson v. Edgewood Mgt. Corp.*, App. D.C., 512 A.2d 287 (1986).

Cited in *Lehndorff U.S.A. (Cent.) Ltd. v. 1330 19th St. Corp.*, 117 WLR 1385 (Super. Ct. 1989).

§ 16-1504. Certification to District Court upon plea of title; undertaking.

Repealed. July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(g)(2).

§ 16-1505. Conclusiveness of judgment.

A judgment of the Superior Court of the District of Columbia in a proceeding pursuant to this chapter is not a bar to any afteraction brought by either party, and does not conclude any question of title between them, where title is not pleaded by the defendants. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(g)(1); 1973 Ed., § 16-1505.)

Section references. — This section is referred to in § 15-318.

Congressional intent. — The summary

remedy for possession was adopted by Congress to make it clear that if the action brought did not sound in ejectment, the final judgment

§ 16-1505 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

would not determine title or be conclusive between the parties as to title unless pleaded by the defendant. *Davis v. Bruner*, App. D.C., 441 A.2d 992 (1982).

CHAPTER 17. GAMING TRANSACTIONS.

Sec.

16-1701. Invalidity of gaming contracts.

16-1702. Recovery of losses at gaming.

16-1703. Relief from further penalty upon dis-

Sec.

covery and repayment of losses.

16-1704. Cheating at gambling.

§ 16-1701. Invalidity of gaming contracts.

(a) A thing in action, judgment, mortgage, or other security or conveyance made and executed by a person in which any part of the consideration is for money or other valuable things won by playing at any game whatsoever, or by betting on the sides or hands of persons who play, or for the reimbursement or payment of any money knowingly lent or advanced for the purpose, or lent or advanced at the time and place of the play or bet, to a person so playing or betting or who, during the play, so plays or bets, is void except as provided by subsection (b) of this section.

(b) If the mortgage, security, or other conveyance affects real property, it shall inure to the sole benefit of, and devolve upon, the persons who might have, or be entitled to, the property, as if the person who executed the instrument had died immediately after its execution, or as if the instrument had been made to the persons so entitled after the death of the person who executed it. A grant or conveyance made for the purpose of preventing the real property from coming to, or devolving upon, the persons intended by this section to enjoy the property as herein provided is fraudulent and void.

(c) This section does not affect the validity of negotiable instruments embraced by subtitle I of Title 28. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1; 1973 Ed., § 16-1701; Apr. 30, 1988, D.C. Law 7-104, § 4(n), 35 DCR 147.)

Section references. — This section is referred to in § 22-508.

Legislative history of Law 7-104. — See note to § 16-1311.

Purpose. — The public policy behind this section, and similar sections, is to deny use of judicial process to those who would undermine laws meant to prevent gambling by using the courts to collect on gambling debts. That policy cannot be vindicated where the gambling involved, betting on the D.C. Lottery, is legal, pursuant to § 2-2501 et seq. *Pearsall v. Alexander*, App. D.C., 572 A.2d 113 (1990).

Application of section. — This section applies to bets lawfully placed with the District of Columbia lottery. *Persall v. Alexander*, 115 WLR 1521 (Super. Ct. 1987).

Agreement between parties to share expense and proceeds of lottery tickets was not a gaming contract as defined in this section, and trial court erred in applying the section. *Pearsall v. Alexander*, App. D.C., 572 A.2d 113 (1990).

Cited in *Gunn v. Woodyard*, 115 WLR 2705 (Super. Ct. 1987).

§ 16-1702. Recovery of losses at gaming.

A person who, at any time or sitting, by playing at cards, dice or any other game, or by betting on the sides or hands of persons who play, loses to a person so playing or betting, a sum of money, or other valuable thing, amounting to \$25 or more, and pays or delivers the money or thing, or any part thereof, may, within three months after the payment or delivery, sue for and recover the money, goods or other valuable thing, so lost and paid or delivered, or any part thereof, or the full value thereof, by a civil action, from the winner thereof, with

costs. If the person who loses the money or other thing, does not, within three months actually and bona fide, and without collusion, sue, and with effect prosecute, therefor, any person may sue for, and recover treble the value of the money, goods, chattels, and other things, with costs of suit, by a civil action against the winner, one-half to the use of the plaintiff, the remainder to the use of the District of Columbia. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1; 1973 Ed., § 16-1702.)

Section references. — This section is referred to in §§ 16-1703, 16-1704, and 22-508.

§ 16-1703. Relief from further penalty upon discovery and repayment of losses.

Upon the discovery and repayment of the money or other thing to be discovered and repaid as provided by section 16-1702, the person who so discovers and repays shall be acquitted, indemnified, and discharged from any further or other punishment, forfeiture, or penalty, that he may have incurred by the playing for, or winning, the money or other thing so discovered and repaid. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1; 1973 Ed., § 16-1703.)

Section references. — This section is referred to in § 22-508.

§ 16-1704. Cheating at gambling.

Whoever, at any one time or sitting, by fraud or false pretense, while playing any game, or while having a share in a wager played for, or while betting on the sides or hands of persons who play, wins, or acquires to himself or to any other person, above the sum or value of \$25, shall, upon conviction of the offense, forfeit five times the value of the sum of money or other thing so won, and shall be deemed infamous.

The penalty prescribed by this section may be recovered in a civil action by the persons specified by, and in the manner provided by, section 16-1702. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1; 1973 Ed., § 16-1704.)

Section references. — This section is referred to in § 22-508.

Cited in *Gunn v. Woodyard*, 115 WLR 2705 (Super. Ct. 1987).

CHAPTER 19. HABEAS CORPUS.

Sec.

16-1901. Petition; issuance of writ.

16-1902. Service of writ; return.

16-1903. Suspected evasion or disobedience of writ; procedure.

16-1904. Forfeiture and penalty for failure to produce.

16-1905. Right to copy of commitment; forfeiture.

Sec.

16-1906. Inquiry into cause of detention; bail; bond.

16-1907. Traversing return; pleading; witnesses.

16-1908. Right of other persons to writ.

16-1909. Construction of chapter.

§ 16-1901. Petition; issuance of writ.

(a) A person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or a person in his behalf, may apply by petition to the appropriate court, or a judge thereof, for a writ of habeas corpus, to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into. The court or the judge applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant the writ, directed to the officer or other person in whose custody or keeping the party so detained is returnable forthwith before the court or judge.

(b) Petitions for writs directed to Federal officers and employees shall be filed in the United States District Court for the District of Columbia.

(c) Petitions for writs directed to any other person shall be filed in the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(h)(1); 1973 Ed., § 16-1901.)

Cross references. — As to constitutional rights of mentally retarded citizens, see § 6-1901 et seq.

As to representation of indigents in criminal cases, see § 11-2601.

Legislative intent. — Congressional intent in enacting this chapter was to create an independent local court system. *Bland v. Rodgers*, 332 F. Supp. 989 (D.D.C. 1971).

Purpose of writ. — The purpose of the writ is to test a prisoner's claim that he or she is being held without right. *Grier v. Palmer*, 113 WLR 2449 (Super. Ct. 1985).

Under this section, issuance of the writ is simply a means of bringing the petitioner before the Superior Court for a hearing on the petitioner's claim for relief. *Bennett v. Ridley*, App. D.C., 633 A.2d 824 (1993).

Authority of federal courts. — This chapter extinguishes the traditional authority of the federal court to review local judicial actions in the District by issuing of writs of habeas corpus. *Bland v. Rodgers*, 332 F. Supp. 989 (D.D.C. 1971).

Applicability. — This section pertains only to the "Great Writ" of habeas corpus ad subjiciendum (inquiry into the cause of restraint) and

not to writs procedural in nature and used for purposes other than to test the legality of confinement. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Writs of habeas corpus ad prosequendum. — The authority to issue writs of habeas corpus ad prosequendum, which bring a person who is confined for some other offense before the issuing court for trial, cannot be read into the language of this section without severe strain. *United States v. Cogdell*, 585 F.2d 1130 (D.C. Cir. 1978), rev'd on other grounds sub nom. *United States v. Bailey*, 444 U.S. 394, 100 S. Ct. 624, 62 L. Ed. 2d 575 (1980).

Since Congress, in reforming the District of Columbia court system, could not have intended to remove the local courts' power to issue writs of habeas corpus ad prosequendum, that authority still exists under the All Writs Act (28 U.S.C. § 1652). *United States v. Cogdell*, 585 F.2d 1130 (D.C. Cir. 1978), rev'd on other grounds sub nom. *United States v. Bailey*, 444 U.S. 394, 100 S. Ct. 624, 62 L. Ed. 2d 575 (1980).

Restraints upon liberty. — Habeas corpus statute reaches any restraint upon "lawful lib-

erty," and prisoner's allegation that he was so restrained in violation of the Lorton Regulations Approval Act (LRAA) was sufficient, without regard to whether or not a constitutional interest was also implicated. *Abdullah v. Roach*, App. D.C., 668 A.2d 801 (1995).

Availability of writ. — Section 23-110 of the D.C. Code and 28 U.S.C. § 2255 generally require a prisoner wishing to challenge the lawfulness of his or her custody to file a Motion to Vacate, Correct or Modify his or her sentence. Only if that remedy is somehow inadequate or ineffective to challenge the lawfulness of his or her confinement can a prisoner seek a writ of habeas corpus. *Wilson v. Office of Chairperson, D.C. Bd. of Parole*, 892 F. Supp. 277 (D.D.C. 1995).

Jurisdiction. — Prisoners convicted in the District of Columbia Superior Court and incarcerated in District of Columbia facilities must file their habeas corpus petitions in Superior Court, while prisoners convicted in Superior Court but incarcerated in federal facilities must file their petitions in the United States District Court for the District of Columbia. *Wilson v. Office of Chairperson, D.C. Bd. of Parole*, 892 F. Supp. 277 (D.D.C. 1995).

Petitions that must be filed in the Superior Court. — Pursuant to this section, petitions must be filed with the Superior Court if they are for writs directed to the D.C. Board of Parole or to Lorton prison wardens, administrators or jailors, or if the petitioner is not in federal prison for any reason, thus including almost all cases arising from a sentence of the Superior Court. *Lewis v. Stempson*, 737 F. Supp. 667 (D.D.C. 1990).

Where petitioner challenging a sentence imposed by the Superior Court is in the custody of District of Columbia officials, he must file his petition in the Superior Court; the federal court is without jurisdiction to entertain the petition. *Wilson v. Office of Chairperson, D.C. Bd. of Parole*, 892 F. Supp. 277 (D.D.C. 1995).

Writ subject to jurisdictional limitations. — The writ authorized by this section has traditionally been subject to jurisdictional limitations. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

The court is not empowered to entertain a petition for a writ of habeas corpus on behalf of a person who is located outside its territorial jurisdiction. *I.B. v. District of Columbia Dep't of Human Resources*, App. D.C., 287 A.2d 827 (1972).

A prisoner who was serving a federal sentence when he filed his petition for writ of habeas corpus and who had not fully served his federal sentence because the detainer warrant the United States Parole Commission had lodged with the superintendent of the District of Columbia Jail had tolled that sentence, was

still serving his federal sentence — and no other — when the District of Columbia Board of Parole executed a parole violator warrant and revoked his parole; therefore, the prisoner should have filed his petition in the federal district court and the Superior Court lacked jurisdiction. *Drew v. Ridley*, App. D.C., 632 A.2d 405 (1993).

Federal post-conviction review. — The unique status of the District of Columbia precludes nearly all federal post-conviction review of District of Columbia Superior Court criminal convictions. *Perkins v. Henderson*, 881 F. Supp. 55 (D.D.C. 1995).

Even if D.C. Code § 23-110 proves inadequate or ineffective to test the legality of a prisoner's detention, a second hurdle must be overcome prior to obtaining federal habeas review found in this section. *Perkins v. Henderson*, 881 F. Supp. 55 (D.D.C. 1995).

Local courts exercise jurisdiction over District facilities. — A court located within the District may entertain habeas corpus petitions from individuals confined within District correctional facilities located outside the limits of the District. *McCall v. Swain*, 510 F.2d 167 (D.C. Cir. 1975).

Youthful offender in adult facility. — Where the length of a youthful offender's temporary detention in an adult facility becomes unduly long, the appropriate means of seeking relief is a petition for habeas corpus. *Austin v. United States*, App. D.C., 299 A.2d 545 (1973).

Transfer of inmates to nonpunishment mental health unit not solely within purview of habeas corpus. — Transfer of inmates to a nonpunishment mental health unit of the District of Columbia correctional system does not come solely within the purview of habeas corpus although habeas corpus may afford alternative relief for inmates challenging that condition of their confinement; accordingly, the exhaustion of remedies in Superior Court is not a prerequisite to federal relief in this transfer situation. *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978).

Parties considered Federal officers and employees within meaning of section. — Where the petitioner is convicted in the United States District Court and confined in the District Reformatory, the Director of the Department of Corrections and the Superintendent of the Reformatory are "Federal officers and employees" within the meaning of this section. *McCall v. Swain*, 510 F.2d 167 (D.C. Cir. 1975).

Physician action pursuant to a Federal magistrate's order under § 21-902 served as a federal officer within the meaning of subsection (b) of this section. *Benson v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978).

Violations of Interstate Agreement on Detainers. — Habeas corpus is not appropriate means to redress violations of Interstate

Agreement on Detainers. *King v. Palmer*, 113 WLR 2437 (Super. Ct. 1985).

Review of petitions. — In reviewing a petition for a writ of habeas corpus challenging a parole revocation, the trial court must determine whether the petitioner has been deprived of his legal rights by the manner in which the revocation hearing was conducted. *Brown-Bey v. Hyman*, App. D.C., 649 A.2d 8 (1994).

The same standard applies to review of a parole decision made by the United States Parole Commission under the District's parole regulations as to a petition for a writ of habeas corpus, i.e., the court does not review the merits of the Board's decision, but only whether the petitioner has been deprived of his legal rights by the manner in which the revocation hearing was conducted, in order to determine whether there has been an abuse of discretion. *Stevens v. Quick*, App. D.C., 678 A.2d 28 (1996).

Adequacy of appellate counsel. — This section does not vest in Superior Court the power to entertain complaints about the adequacy of appellate counsel. *Watson v. United States*, App. D.C., 536 A.2d 1056 (1987), cert. denied, 486 U.S. 1010, 108 S. Ct. 1740, 100 L. Ed. 2d 203 (1988).

Recomputation of sentence. — A petition

to seek a recomputation of a sentence is not barred by a prior legal proceeding challenging the computation where no other court has thoroughly considered the exact issue raised in the petition. *Cogdell v. Jackson*, 397 F. Supp. 362 (D.D.C. 1975).

Reduced sentence following probation revocation. — It was not error for a judge to deny a writ of habeas corpus, sought on the ground that the defendant was entitled to credit for time served on his original sentence after probation was revoked, where it was presumed that the reduced sentence that followed the probation revocation took into account the time the defendant had already served. *Brame v. Palmer*, App. D.C., 510 A.2d 229 (1986).

Cited in *Banks v. Ferrell*, App. D.C., 411 A.2d 54 (1979); *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981); *Streater v. Jackson*, 691 F.2d 1026 (D.C. Cir. 1982); *Morgan v. Foretich*, App. D.C., 564 A.2d 1 (1989); *Morrison v. United States*, App. D.C., 579 A.2d 686 (1990); *Alston v. United States*, App. D.C., 590 A.2d 511 (1991); *Ali v. District of Columbia*, App. D.C., 612 A.2d 228 (1992); *Millard v. Roach*, App. D.C., 631 A.2d 1217 (1993); *Jones v. Braxton*, App. D.C., 647 A.2d 1116 (1994).

§ 16-1902. Service of writ; return.

A writ of habeas corpus issued pursuant to this chapter shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the prison or place at which the party suing it out is detained. The officer or other person shall forthwith, or within such reasonable time as the court or judge directs:

(1) make return of the writ and cause the person detained to be brought before the court or judge, according to the command of the writ; and

(2) certify the true cause of his detainer or imprisonment, if any, and under what color or pretense he is confined or restrained of his liberty. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1; 1973 Ed., § 16-1902.)

§ 16-1903. Suspected evasion or disobedience of writ; procedure.

On an application for a writ of habeas corpus, if probable cause is shown for believing that the person charged with confining or detaining the person applying therefor, or on whose behalf the application is made:

(1) is about to remove the person so detained from the place where he is then detained, for the purpose of evading a writ of habeas corpus, or for other purposes; or

(2) he would evade or not obey a writ of habeas corpus —
the court or judge shall insert in the writ a clause commanding the United States marshal to serve the writ on the person to whom it is directed and cause him immediately to appear before the court or judge, together with the person

so confined or detained. Thereupon, the marshal shall immediately carry those persons before the court or judge, and the court or judge shall proceed to inquire into the matter. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1; 1973 Ed., § 16-1903.)

§ 16-1904. Forfeiture and penalty for failure to produce.

If an officer or other person to whom a writ of habeas corpus is directed neglects or refuses to:

- (1) make return of the writ; or
- (2) bring the body of the person detained —

according to the command of the writ, he shall forfeit to the person detained the sum of \$500, and be liable to attachment and punishment as for a contempt. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1; 1973 Ed., § 16-1904.)

Purpose. — The intent of this section is to impose personal, as distinct from official, liability. *Whittington v. Cameron*, 344 F.2d 564 (D.C. Cir.), cert. denied, 382 U.S. 855, 86 S. Ct. 105, 15 L. Ed. 2d 93 (1965).

Action naming party not personally responsible for actions complained is defective. — An action to collect a penalty under

this section which names the present superintendent of a facility as the respondent, where the actions complained of are those of a former superintendent, is fatally defective. *Whittington v. Cameron*, 344 F.2d 564 (D.C. Cir.), cert. denied, 382 U.S. 855, 86 S. Ct. 105, 15 L. Ed. 2d 93 (1965).

§ 16-1905. Right to copy of commitment; forfeiture.

A person committed or detained, or a person in his behalf, may demand a true copy of the warrant of commitment or detainer. An officer or other person detaining a person, who refuses or neglects to deliver to him or to a person in his behalf a true copy of the warrant of commitment or detainer, if one exists, within six hours after the demand, shall forfeit to the party so detained the sum of \$500. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1; 1973 Ed., § 16-1905.)

§ 16-1906. Inquiry into cause of detention; bail; bond.

On the return of a writ of habeas corpus issued pursuant to this chapter and the production of the person detained, the court or judge shall immediately inquire into the legality and propriety of the confinement or detention. If it appears that the person is detained without legal warrant or authority, the court or judge shall immediately release or discharge him. If the court or judge deems his detention to be lawful and proper, the court or judge shall remand him to the same custody, or, in a proper case, admit him to bail, if he is confined on a charge of having committed a bailable criminal offense. If he is bailed, the court or judge shall require a sufficient bond or recognizance to answer in the proper court, and transmit it to that court. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1; 1973 Ed., § 16-1906.)

Petition challenging out-of-state detention will not lie in District. — Where the

petitioner is present within the District only because of his counsel's request that he be

brought in for interviews, a petition challenging his detention in an out-of-state reformatory

will not lie in the District. *Ginyard v. Clemmer*, 357 F.2d 291 (D.C. Cir. 1966).

§ 16-1907. Traversing return; pleading; witnesses.

A person at whose instance or in whose behalf a writ of habeas corpus has been issued may traverse the return thereto, or plead any matters showing that there is not a sufficient legal cause for his confinement or detention. The court or judge may issue process for witnesses or for the production of papers, which shall be served and enforced in like manner as similar process issued in a cause pending in the court, if the court or judge is satisfied as to the materiality of the testimony proposed to be adduced. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1; 1973 Ed., § 16-1907.)

§ 16-1908. Right of other persons to writ.

A person entitled to the custody of another person, unlawfully confined or detained by a third person, as a parent, guardian, committee, or husband, entitled to the custody of a minor child, ward, lunatic, or wife, upon application to the court or a judge as provided by this chapter, and showing just cause therefor, under oath, is entitled to a writ of habeas corpus, directed to the person confining or detaining, requiring him forthwith to appear and produce before the court or judge the person so detained, and the same proceedings shall be had in relation thereto as provided for by this chapter. The court or judge, upon hearing the proofs, shall determine which of the contesting parties is entitled to the custody of the person so detained, and commit the custody of the person to the party legally entitled thereto. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1; 1973 Ed., § 16-1908.)

Cross references. — As to representation of indigents in criminal cases, see § 11-2601.

As to custody of children in action for divorce or annulment, see § 16-911.

Child custody actions. — A habeas corpus proceeding is an appropriate means of resolv-

ing a child custody dispute. *Shelton v. Bradley*, App. D.C., 526 A.2d 579 (1987).

Cited in *In re E.Q.B.*, App. D.C., 617 A.2d 199 (1992).

§ 16-1909. Construction of chapter.

This chapter does not affect any provision of chapter 153 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1; 1973 Ed., § 16-1909.)

CHAPTER 21. JOINT CONTRACTS.

Sec.

16-2101. Definition of joint and several contracts.

16-2102. Death of party to the contract.

16-2103. Extinguishment or merger of cause of action.

Sec.

16-2104. Death after action brought; legal representatives.

16-2105. Proof of joint liability unnecessary; judgment.

16-2106. Separate composition or compromise.

§ 16-2101. Definition of joint and several contracts.

For the purposes of action thereon, a contract or obligation entered into by two or more persons, whether:

- (1) the persons are partners or joint contractors;
- (2) the contract is under seal or not;
- (3) it is written or verbal; or
- (4) it is expressed to be joint and several or not —

is deemed to be joint and several. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1; 1973 Ed., § 16-2101.)

Section references. — This section is referred to in §§ 16-2102 and 16-2103.

Effect of section. — Section does not affect the substantive rights and duties of the parties. *Clayman v. Goodman Properties, Inc.*, 518 F.2d 1026 (D.C. Cir. 1973).

Joint and several liability rule should apply to landlords. — The sweeping, general terms of this section and its apparent purpose strongly suggest that the joint and several liability rule should apply to landlords as it does to tenants. *Park v. Didden*, 695 F.2d 626 (D.C. Cir. 1982).

Cotenants not indispensable parties in action for rent. — An action for rent against

one of several cotenants cannot be dismissed for not joining the other tenants, since all the tenants are jointly liable for the rent and can be sued either jointly or separately. *Ostrow v. Smulkin*, App. D.C., 249 A.2d 520 (1969).

Final judgment on note no bar to subsequent suit. — Although all the claims against the maker of the note are merged into the final judgment, this does not prevent a subsequent suit being filed against other parties, such as endorsers and accommodation parties, whose liability on the instrument is joint and several. *McLachlen Nat'l Bank v. Fields*, App. D.C., 364 A.2d 1191 (1976).

§ 16-2102. Death of party to the contract.

If a person specified by section 16-2101 dies, his executors, administrators, or heirs are bound by the contract in the same manner and to the same extent as if the contract or obligation were expressed to be joint and several. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1; 1973 Ed., § 16-2102.)

§ 16-2103. Extinguishment or merger of cause of action.

Where, with respect to a contract specified by section 16-2101, an action is brought against:

- (1) all the parties thereto, but service of process is had on some, only, of the defendants; or
- (2) some, only, of the parties thereto, and service of process is had on them only —

a judgment against the parties so served does not work an extinguishment or merger of the cause of action on which the judgment is founded as respects the

parties not so served. They shall remain liable to be sued separately. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1; 1973 Ed., § 16-2103.)

Final judgment on note no bar to subsequent suit. — Although all the claims against the maker of the note are merged into the final judgment, this does not prevent a subsequent suit being filed against other parties, such as

endorsers and accommodation parties, whose liability on the instrument is joint and several. *McLachlen Nat'l Bank v. Fields*, App. D.C., 364 A.2d 1191 (1976).

§ 16-2104. Death after action brought; legal representatives.

When one of several defendants in an action dies after the commencement of the action, his legal representatives may be made parties to the action as directed by chapter 1 of Title 12. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1; 1973 Ed., § 16-2104.)

§ 16-2105. Proof of joint liability unnecessary; judgment.

In actions *ex contractu* against alleged joint debtors it is not necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action. He is entitled to recover, as in actions *ex delicto*, against such of the defendants as are shown by the evidence to be jointly indebted to him, or against one only, if he alone is shown to be indebted to him and judgment shall be rendered as if the others had not been joined in the action. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1; 1973 Ed., § 16-2105.)

§ 16-2106. Separate composition or compromise.

Any one of several joint debtors when their debt is overdue, may make a separate composition or compromise with their creditors, with the same effect as is provided in the case of parties by chapter 2 [3] of Title 41. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1; 1973 Ed., § 16-2106.)

References in text. — Near the end of this section, "3" was inserted, in brackets, to reflect

the renumbering of "chapter 2" in the 1981 Edition of the D.C. Code.

CHAPTER 23. FAMILY DIVISION PROCEEDINGS.

Subchapter I. Proceedings Regarding Delinquency, Neglect, or Need of Supervision.

Sec.

- 16-2301. Definitions.
- 16-2302. Transfer of criminal matters to Family Division.
- 16-2303. Retention of jurisdiction.
- 16-2304. Right to counsel; party status.
- 16-2305. Petition; contents; amendment.
- 16-2305.1. Findings.
- 16-2305.2. Preliminary probation conferences; adjustment process.
- 16-2306. Service of summons and petition.
- 16-2307. Transfer for criminal prosecution.
- 16-2308. Initial appearance.
- 16-2309. Taking into custody.
- 16-2310. Criteria for detaining children.
- 16-2310.1. Separation of young children detained prior to a hearing.
- 16-2311. Release or delivery to Family Division.
- 16-2311.1. Rules.
- 16-2312. Detention or shelter care hearing; intermediate disposition.
- 16-2313. Place of detention or shelter.
- 16-2314. Consent decree.
- 16-2315. Physical and mental examinations.
- 16-2316. Conduct of hearings; evidence.
- 16-2317. Hearings, findings; dismissal.
- 16-2318. Order of adjudication noncriminal.
- 16-2319. Predisposition study and report.
- 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.
- 16-2321. Disposition of mentally ill or substantially retarded child.
- 16-2322. Limitation of time on dispositional orders.
- 16-2323. Review of dispositional orders.
- 16-2324. Modification, termination of orders.
- 16-2325. Support of committed child.
- 16-2325.1. Participation order.
- 16-2326. Court costs and expenses.
- 16-2326.1. Compensation of attorneys in neglect and termination of parental rights proceedings.
- 16-2327. Probation revocation; disposition.
- 16-2328. Interlocutory appeals.
- 16-2329. Finality of judgments; appeals; transcripts.
- 16-2330. Time computation.
- 16-2331. Juvenile case records; confidentiality; inspection and disclosure.
- 16-2332. Juvenile social records; confidentiality; inspection and disclosure.
- 16-2333. Police and other law enforcement records.
- 16-2334. Fingerprint records.

Sec.

- 16-2335. Sealing of records.
- 16-2336. Unlawful disclosure of records; penalties.
- 16-2337. Additional powers of the Director of Social Services.
- 16-2338. Emergency medical treatment.
- 16-2339. Immunity for juveniles who are witnesses in juvenile proceedings.

Subchapter II. Parentage Proceedings.

- 16-2341. Representation.
- 16-2342. Time of bringing complaint.
- 16-2342.1. Voluntary acknowledgement of paternity.
- 16-2343. Tests to establish parentage.
- 16-2343.1. Admissibility of tests.
- 16-2343.2. Sanctions.
- 16-2343.3. Default order.
- 16-2344. Exclusion of public.
- 16-2345. New birth record upon marriage or determination of natural parents.
- 16-2346. Certificate to Registrar.
- 16-2347. Death of respondent; liability of estate.
- 16-2348. Parentage records; confidentiality; inspection and disclosure.

Subchapter III. Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children.

- 16-2351. Purpose of the subchapter; construction of provisions.
- 16-2352. Definitions.
- 16-2353. Grounds for termination of parent and child relationship.
- 16-2354. Motions.
- 16-2355. Consideration of termination of the parent and child relationship at review hearings.
- 16-2356. Parties.
- 16-2357. Notice.
- 16-2358. Conduct of hearings.
- 16-2359. Adjudicatory hearing.
- 16-2360. Disposition after termination.
- 16-2361. Effect of termination decree.
- 16-2362. Decrees.
- 16-2363. Confidentiality of records.
- 16-2364. Unlawful disclosure.
- 16-2365. Termination decrees of other jurisdictions.

Subchapter IV. Court-Appointed Special Advocates.

- 16-2371. Definitions.
- 16-2372. Court-appointed special advocate program.

*Subchapter I. Proceedings Regarding Delinquency, Neglect, or
Need of Supervision.*

§ 16-2301. Definitions.

As used in this subchapter —

(1) The term “Division” means the Family Division of the Superior Court of the District of Columbia.

(2) The term “judge” means a judge assigned to the Family Division of the Superior Court.

(3) The term “child” means an individual who is under 18 years of age, except that the term “child” does not include an individual who is sixteen years of age or older and —

(A) charged by the United States attorney with (i) murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense;

(B) charged with an offense referred to in subparagraph (A)(i) and convicted by plea or verdict of a lesser included offense; or

(C) charged with a traffic offense.

For purposes of this subchapter the term “child” also includes a person under the age of twenty-one who is charged with an offense referred to in subparagraph (A)(i) or (C) committed before he attained the age of sixteen, or a delinquent act committed before he attained the age of eighteen.

(4) The term “minor” means an individual who is under the age of twenty-one years.

(5) The term “adult” means an individual who is twenty-one years of age or older.

(6) The term “delinquent child” means a child who has committed a delinquent act and is in need of care or rehabilitation.

(7) The term “delinquent act” means an act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law. Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.

(8) The term “child in need of supervision” means a child who —

(A)(i) subject to compulsory school attendance and habitually truant from school without justification;

(ii) has committed an offense committable only by children; or

(iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and

(B) is in need of care or rehabilitation.

(9) The term “neglected child” means a child:

(A) who has been abandoned or abused by his or her parent, guardian, or other custodian; or

(B) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian; or

(C) whose parent, guardian, or other custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; or

(D) whose parent, guardian, or custodian refuses or is unable to assume the responsibility for the child's care, control or subsistence and the person or institution which is providing for the child states an intention to discontinue such care; or

(E) who is in imminent danger of being abused and whose sibling has been abused; or

(F) who has received negligent treatment or maltreatment from his or her parent, guardian, or other custodian.

No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for the purposes of this subchapter; and

(G) who has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child.

No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for the purposes of this subchapter.

(10) The term "mentally ill child" means a child who is mentally ill within the meaning of section 21-501.

(11) The term "substantially retarded child" means a child who is substantially retarded within the meaning of section 21-1101 et seq.

(12) The term "custodian" means a person or agency, other than a parent or legal guardian:

(A) to whom the legal custody of a child has been granted by the order of a court;

(B) who is acting in loco parentis; or

(C) who is a day care provider or an employee of a residential facility, in the case of the placement of an abused or neglected child.

(13) The term "detention" means the temporary, secure custody of a child in facilities, designated by the Division, pending a final disposition of a petition.

(14) The term "shelter care" means the temporary care of a child in physically unrestricting facilities, designated by the Division, pending a final disposition of a petition.

(15) The term "detention or shelter care hearing" means a hearing to determine whether a child who is in custody should be placed or continued in detention or shelter care.

(16) The term “factfinding hearing” means a hearing to determine whether the allegations of a petition are true.

(17) The term “dispositional hearing” means a hearing, after a finding of fact, to determine —

(A) whether the child in a delinquency or need of supervision case is in need of care or rehabilitation and, if so, what order of disposition should be made; or

(B) what order of disposition should be made in a neglect case.

(18) The term “probation” means a legal status created by Division order following an adjudication of delinquency or need of supervision, whereby a minor is permitted to remain in the community subject to appropriate supervision and return to the Division for violation of probation at any time during the period of probation.

(19) The term “protective supervision” means a legal status created by Division order in neglect cases whereby a minor is permitted to remain in his home under supervision, subject to return to the Division during the period of protective supervision.

(20) The term “guardianship of the person of a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor, and concern with his general welfare. It includes (but is not limited to) —

(A) authority to consent to marriage, enlistment in the armed forces of the United States, and major medical, surgical, or psychiatric treatment; to represent the minor in legal actions; and to make other decisions concerning the minor of substantive legal significance;

(B) the authority and duty of reasonable visitation (except as limited by Division order);

(C) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent (except where legal custody has been vested in another person or an agency or institution); and

(D) the authority to exercise residual parental rights and responsibilities when the rights of his parents or only living parent have been judicially terminated or when both parents are dead.

(21) The term “legal custody” means a legal status created by Division order which vests in a custodian the responsibility for the custody of a minor which includes —

(A) physical custody and the determination of where and with whom the minor shall live;

(B) the right and duty to protect, train, and discipline the minor; and

(C) the responsibility to provide the minor with food, shelter, education, and ordinary medical care.

A Division order of “legal custody” is subordinate to the rights and responsibilities of the guardian of the person of the minor and any residual parental rights and responsibilities.

(22) The term “residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person, including (but not limited to) the right

of visitation, consent to adoption, and determination of religious affiliation and the responsibility for support.

(23) The term “abused”, when used with reference to a child, means a child whose parent, guardian, or custodian inflicts or fails to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment, an act of sexual abuse, molestation, or exploitation, or an injury that results from exposure to drug-related activity in the child’s home environment.

(24) The term “negligent treatment” or “maltreatment” means failure to provide adequate food, clothing, shelter, or medical care, which includes medical neglect, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian.

(25) The term “sexual exploitation” means a parent, guardian, or other custodian allows a child to engage in prostitution as defined in section 2(1) of the Control of Prostitution and Sale of Controlled Substances in Public Places Criminal Control Act of 1981, effective December 10, 1981 (D.C. Law 4-57; D.C. Code, sec. 22-2701.1), or means a parent, guardian, or other custodian engages a child or allows a child to engage in obscene or pornographic photography, filming, or other forms of illustrating or promoting sexual conduct as defined in section 2(5) of the District of Columbia Protection of Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; D.C. Code, sec. 22-2011(5)).

(26) The term “parenting classes” means any program which enhances the parenting skills of individuals through providing role models, discussion, training in early childhood development and child psychology, or other instruction designed to strengthen the parent, guardian, or custodian’s ability to nurture children.

(27) The term “family counseling” means any psychological or psychiatric or other social service offered by a provider to the parent and 1 or more members of the extended family or the child’s guardian or other caretaker of a child who has been adjudicated neglected, delinquent, or in need of supervision. A caretaker is an adult person in whose care a minor has been entrusted by written authorization of the child’s parent, guardian, or legal custodian. (Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 523, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2301; Sept. 23, 1977, D.C. Law 2-22, title I, § 110(a), 24 DCR 3341; Mar. 12, 1986, D.C. Law 6-90, § 2, 33 DCR 307; Mar. 15, 1990, D.C. Law 8-87, § 4(a), 37 DCR 50; June 8, 1990, D.C. Law 8-134, § 2(a), 37 DCR 2613; Mar. 6, 1991, D.C. Law 8-200, § 2, 37 DCR 7334; Mar. 16, 1995, D.C. Law 10-227, § 3(a), 42 DCR 4; May 23, 1995, D.C. Law 10-257, § 401(e), 42 DCR 53; Apr. 18, 1996, D.C. Law 11-110, § 65, 43 DCR 530.)

- I. In General.
- II. Jurisdiction in Criminal Cases.
- III. Children in Need of Supervision.
- IV. Child Neglect.
- V. Procedural and Appellate Issues.

I. IN GENERAL.

Cross references. — As to exclusive jurisdiction of Family Division of Superior Court, see § 11-1101.

As to right to counsel in Family Division proceedings, see § 16-2304.

As to age of majority, see note following § 21-101.

Section references. — This section is referred to in §§ 2-1352, 3-203.1, 11-721, 11-1101, 16-2304, 16-2315, 16-2316, and 16-2352.

Effect of amendments. — D.C. Law 10-227 added (26) and (27).

D.C. Law 10-257 substituted “first degree sexual abuse” for “forcible rape” in (3)(A).

D.C. Law 11-110 made a technical correction to D.C. Law 10-257 with no effect upon the text.

Emergency act amendments. — For temporary amendment of section, see § 2 of the District of Columbia Public School Firearm Prohibition Emergency Act of 1989 (D.C. Act 8-4, March 7, 1989, 36 DCR 1906).

For temporary amendment of section, see § 4 of the Prevention of Child Neglect Emergency Amendment Act of 1993 (D.C. Act 10-100, August 9, 1993, 40 DCR 6141).

For temporary amendment of section, see § 4 of the Prevention of Child Neglect Emergency Amendment Act of 1994 (D.C. Act 10-288, July 22, 1994, 41 DCR 4992).

Legislative history of Law 2-22. — See note to § 2-1351.

Legislative history of Law 6-90. — Law 6-90 was introduced in council and assigned Bill No. 6-104, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 19, 1985, and December 3, 1985, respectively. Signed by the Mayor on December 30, 1985, it was assigned Act No. 6-118 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-1. — Law 8-1, the “District of Columbia Public School Firearm Prohibition Temporary Act of 1989,” was introduced in Council and assigned Bill No. 8-130. The Bill was adopted on first and second readings on February 14, 1989, and February 28, 1989, respectively. Signed by the Mayor on March 21, 1989, it was assigned Act No. 8-8 and transmitted to both Houses of Congress for its review. D.C. Law 8-1 became effective on May 16, 1989.

Legislative history of Law 8-87. — Law 8-87, the “Protection of Children from Exposure to Drug-related Activity Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-139, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-137 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-134. — Law 8-134, the “Infant and Child Abandonment Prevention Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-404, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 13, 1990, it was assigned Act No. 8-190 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-200. — Law 8-200, the “Child Abuse and Neglect Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-81, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 9, 1990, and October 23, 1990, respectively. Signed by the Mayor on November 8, 1990, it was assigned Act No. 8-263 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-61. — D.C. Law 10-61, the “Prevention of Child Neglect Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-374. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act No. 10-114 and transmitted to both Houses of Congress for its review. D.C. Law 10-61 became effective on November 20, 1993.

Legislative history of Law 10-227. — Law 10-227, the “Parental Responsibility Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-634, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-368 and transmitted to both Houses of Congress for its review. D.C. Law 10-227 became effective on March 16, 1995.

Legislative history of Law 10-257. — Law 10-257, the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was

assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Definitions applicable. — The definitions in § 6-2101 apply to the terms appearing in the 1977 amendment to this section.

D.C. Law Review. — For article, "Combating unnecessary family separation: How to seek court-ordered housing for families in the District of Columbia neglect system," see 2 D.C. L. Rev. 25 (1993).

For symposium, "The unnecessary detention of children in the District of Columbia — Substituting secure detention for shelter care: An illegal deprivation of liberty", see 3 D.C. L. Rev. 223 (1995).

For symposium, "The unnecessary detention of children in the District of Columbia — The role of the probation officer in intake: Stories from before, during, and after the delinquency initial hearing", see 3 D.C. L. Rev. 235 (1995).

For symposium, "The unnecessary detention of children in the District of Columbia — Juvenile detention law in the District of Columbia: A practitioner's guide", see 3 D.C. L. Rev. 281 (1995).

For symposium, "The unnecessary detention of children in the District of Columbia — Children with disabilities in detention: Legal strategies to secure release", see 3 D.C. L. Rev. 299 (1995).

For symposium, "The unnecessary detention of children in the District of Columbia, — The right of children in the juvenile justice system to inclusion in the federally mandated child welfare services system", see 3 D.C. L. Rev. 311 (1995).

Purpose of section. — The purpose of this section is to avoid treatment of juveniles as adult criminal defendants to the extent practicable. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

Purpose of subchapter. — Objective of this subchapter's detailed, integrated statutory scheme is to require that the Family Division, armed with the best information available and a wide array of options, will devise that disposition which offers the best prospect for rehabilitating the subject offender and thus for protecting the public interest as well. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Constitutionality of paragraph (23). — Paragraph (23) is not unconstitutionally vague, but provides the requisite flexibility for a trial judge to determine neglect and abuse based on individual circumstances. In re J.A., App. D.C., 601 A.2d 69 (1991).

Construction. — This section was enacted at the same time as the rest of the neglect statute and must be read in combination with all of its other provisions. In re A.M., App. D.C., 589 A.2d 1252 (1991).

Legal custody. — The definition of legal custody provided a basis for analyzing the nature of the legal relationship between child-placing agencies and proposed adoptees following the natural mothers' relinquishment of parental rights. In re S.G., App. D.C., 663 A.2d 1215 (1995).

Noncriminal treatment preferred. — It is implicit in the statutory scheme governing juvenile proceedings that noncriminal treatment is to be the rule, and adult treatment the exception. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

Effect of 1970 amendment. — The 1970 amendment to this section does not automatically require a new determination of the status of a previously committed juvenile. I.B. v. District of Columbia Dep't of Human Resources, App. D.C., 287 A.2d 827 (1972).

Cited in *Choco v. United States*, App. D.C., 383 A.2d 333 (1978); In re H.M., App. D.C., 386 A.2d 707 (1978); In re A.S.W., App. D.C., 391 A.2d 1385 (1978); *North v. District of Columbia Bd. of Educ.*, 471 F. Supp. 136 (D.D.C. 1979); In re C.P., App. D.C., 439 A.2d 460 (1981); *Jackson v. United States*, App. D.C., 441 A.2d 1000 (1982); In re E.S.N., App. D.C., 446 A.2d 16 (1982); *United States v. Willis*, 110 WLR 929 (Super. Ct. 1982); In re L.E.J., App. D.C., 465 A.2d 374 (1983); In re K.A., App. D.C., 484 A.2d 992 (1984); In re M.M.M., App. D.C., 485 A.2d 180 (1984); In re A.B., App. D.C., 486 A.2d 1167 (1984); In re C.S. MCP, App. D.C., 514 A.2d 446 (1986); *Montgomery v. United States*, App. D.C., 521 A.2d 1150 (1987); *Lucas v. United States*, App. D.C., 522 A.2d 876 (1987); In re Gary H., 115 WLR 1201 (Super. Ct. 1987); In re D.R., App. D.C., 541 A.2d 1260 (1988); *Christopher B. v. Barry*, 715 F. Supp. 1143 (D.D.C. 1989); In re D.B., 117 WLR 665 (Super. Ct. 1989); In re O.L., 117 WLR 1329 (Super. Ct. 1989); In re D.H., 117 WLR 2109 (Super. Ct. 1989); In re A.W., App. D.C., 569 A.2d 168 (1990); *N.H. v. District of Columbia*, App. D.C., 569 A.2d 1179 (1990); In re D.R.M., App. D.C., 570 A.2d 796 (1990); In re S.H., App. D.C., 570 A.2d 814 (1990); *Simpson v. United States*, App. D.C., 576 A.2d 1336 (1990); In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990); In re R.B., 118 WLR 2405 (Super. Ct. 1990); In re A.H., App. D.C., 590 A.2d 123 (1991); In re J.D.C., App. D.C., 594 A.2d 70 (1991); In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991); In re W.L., App. D.C., 603 A.2d 839 (1991); *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991); In re L.J.T., App. D.C., 608 A.2d 1213 (1992); In re T.B., 120 WLR 1089 (Super. Ct. 1992); In re Myrick, App. D.C., 624 A.2d 1222 (1993); In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994); In re I.B., App. D.C., 631 A.2d 1225 (1993); In re L.H., App. D.C., 634 A.2d 1230 (1993); In re X.B., App. D.C., 637 A.2d

1144 (1994); *M.D. v. C.J.*, 122 WLR 221 (Super. Ct. 1994); *In re T.R.J.*, App. D.C., 661 A.2d 1086 (1995); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995); *In re K.E.W.*, 123 WLR 1769 (Super. Ct. 1995); *Doe ex rel. Fein v. District of Columbia*, 93 F.3d 861 (D.C. Cir. 1996).

II. JURISDICTION IN CRIMINAL CASES.

Jurisdiction of Superior Court. — Superior Court may assume jurisdiction over juvenile charged with violating federal law whether or not the United States District Court waives its jurisdiction under a “surrender statute.” *District of Columbia v. P.L.M.*, App. D.C., 325 A.2d 600 (1974).

Jurisdiction deemed primary, not exclusive. — Where a juvenile is alleged to be delinquent on the basis of a violation of federal law, the Division has primary, but not exclusive, jurisdiction over the matter. Furthermore, this does not constitute a denial of equal protection. *District of Columbia v. P.L.M.*, App. D.C., 325 A.2d 600 (1974).

Determination of “child” status required. — Unless it is determined person is “child” within statutory definition, Division lacks jurisdiction. *United States v. Bland*, 472 F.2d 1329 (D.C. Cir. 1972), cert. denied, 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975 (1973).

Person legally becomes 18 years old on the day of his birthday and not the day before for purposes of paragraph (3) of this section. *United States v. Tucker*, App. D.C., 407 A.2d 1067 (1979).

Construction of paragraph (3). — Paragraph (3) should be strictly construed against the prosecution and in favor of the person being proceeded against. *United States v. Tucker*, App. D.C., 407 A.2d 1067 (1979).

Custodial statements. — Because juvenile was arrested for murder as an adult pursuant to a valid arrest warrant, and jurisdiction was transferred to the Criminal Division, at the time juvenile gave his custodial statement, Superior Court Juvenile Rule 105 was not applicable. *In re D.H.*, App. D.C., 666 A.2d 462 (1995).

Juveniles charged as adults not denied constitutional rights. — Juveniles in the 16 to 18 year old age group who are charged with certain enumerated felonies are not denied procedural due process or equal protection because the United States attorney is authorized to proceed against them as adults. *United States v. Alexander*, 333 F. Supp. 1213 (D.D.C. 1971).

The exercise of the discretion vested in the United States attorney to charge a person 16 years of age or older with a certain enumerated offense and to prosecute him as an adult is not violative of due process. *United States v. Bland*,

472 F.2d 1329 (D.C. Cir. 1972), cert. denied, 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975 (1973).

That portion of the definition of a “child” which excludes including an individual 16 years of age or older who is charged by the United States attorney with certain enumerated offenses is not unconstitutional, either as an arbitrary legislative classification or as a negation of the presumption of innocence. *United States v. Bland*, 472 F.2d 1329 (D.C. Cir. 1972), cert. denied, 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975 (1973).

United States attorney’s authority unfettered by § 16-2307. — The United States attorney’s authority to determine whether or not a juvenile who is 16 years of age and who is charged with a certain enumerated offense should be charged as an adult is unfettered by § 16-2307. *Brown v. United States*, App. D.C., 343 A.2d 48 (1975).

Circumstances under which court reviews prosecutor’s decision. — Circumstances under which the appellate court is entitled to review the exercise of the prosecutorial discretion as to whether or not a person should be charged as a juvenile or as an adult include the deliberate presence of such factors as race, religion or other arbitrary classifications. *United States v. Bland*, 472 F.2d 1329 (D.C. Cir. 1972), cert. denied, 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975 (1973).

Paragraph (3)(A) effects transfer to Criminal Division. — Paragraph (3)(A) of this section, by deeming an individual not to be a “child” when certain serious offenses are charged, in effect decrees by operation of law a “transfer” of that individual to the Criminal Division within the meaning of § 16-2307(h), with the resulting termination of Family Division jurisdiction (subject to restoration as prescribed) over any subsequent delinquent act for which there is a criminal statute equally applicable to adults. *In re C.S.*, App. D.C., 384 A.2d 407 (1977).

Once an individual who is 16 years of age or older has been charged by the United States Attorney with a crime pursuant to paragraph (3)(A) of this section, that individual shall be deemed transferred for criminal prosecution within the meaning of § 16-2307(h), with the resulting termination of Family Division jurisdiction. *In re M.R.*, App. D.C., 525 A.2d 614 (1987).

Effect of transfer to Criminal Division. — When an individual is presented to the Criminal Division of the court, pursuant to the charging discretion allowed the prosecutor by statute, the court does not act in a “*parens patriae*” role as in the Family Division, but correspondingly, the accused receives the full panoply of protections available in adult court. *Catlett v. United States*, App. D.C., 545 A.2d

1202 (1988), cert. denied, 488 U.S. 1017, 109 S. Ct. 814, 102 L. Ed. 2d 803 (1989).

Retention of jurisdiction under paragraph (3)(A). — Once a juvenile has been prosecuted in the Criminal Division as an adult under paragraph (3)(A), the Criminal Division retains jurisdiction over that juvenile until final disposition of all pending charges. *Partlow v. United States*, App. D.C., 673 A.2d 642 (1996).

Termination of prosecution. — Congress, in § 16-2307(h), made “termination of the prosecution” (provided there has been no intervening charged offense) the event triggering restoration of Family Division jurisdiction. Since paragraph (3)(B) of this section and § 16-2307(h) were enacted at the same time and are plainly in pari materia, the latter can inform the court’s understanding of the former. *Partlow v. United States*, App. D.C., 673 A.2d 642 (1996).

“Assault with intent to commit murder.” — Section 22-503 is construed to include the offense of assault with intent to murder. This construction gives effect to Congress’ intention in enacting paragraph (3)(A) of this section “to authorize the prosecution of certain juveniles as adults only when they are charged with an assault committed with a malicious intent to kill.” *United States v. Hobbs*, App. D.C., 594 A.2d 66 (1991).

Assault with intent to “murder” distinguishable from assault with intent to “kill.” — A juvenile aged 16 or 17 is excluded from the definition of “child,” and thus is subject to adult criminal prosecution — without the necessity of a judicial transfer under § 16-2307 — only when he or she is charged with assault with intent to commit murder, not when he is charged with assault with intent to kill. *Logan v. United States*, App. D.C., 483 A.2d 664 (1984).

“Charged” defined. — “Charged,” for purposes of paragraph (3)(A), is a function of the United States Attorney’s prosecutorial discretion which, under constitutional principles of separation of powers, is rarely subject to judicial review. *Marrow v. United States*, App. D.C., 592 A.2d 1042 (1991).

Although neither this section nor its legislative history expressly provides a definition of the phrase “charged by the United States Attorney,” the plain reading of the phrase makes clear that an individual is charged with one of the enumerated offenses under paragraph (3)(A) when a criminal complaint, affidavit in support of an arrest warrant approved by an Assistant United States Attorney, and warrant showing a felony charge designated by an Assistant United States Attorney are signed by a judge and filed in the warrant office. *Marrow v. United States*, App. D.C., 592 A.2d 1042 (1991).

III. CHILDREN IN NEED OF SUPERVISION.

Child in need of supervision. — “Child in need of supervision” definition is not a criminal statute in the ordinary sense, as it reinforces the authority of the parents to control their children through the giving of reasonable and lawful commands and may only be invoked where the children repeatedly refuse to recognize their obligation to obey such commands. *District of Columbia v. B.J.R.*, App. D.C., 332 A.2d 58, cert. denied, 421 U.S. 1016, 95 S. Ct. 2425, 44 L. Ed. 2d 685 (1975).

As a general matter petitions brought under paragraph (8)(A)(iii) and (B) of this section have not been deemed criminal. In *re B.L.B.*, App. D.C., 432 A.2d 722 (1981).

In determining whether a child is a “child in need of supervision,” the court may rely only on evidence that is legally admissible. In *re D.M.C.*, App. D.C., 503 A.2d 1280 (1986).

Definition is constitutional. — “Child in need of supervision” definition is not unconstitutionally vague. *District of Columbia v. B.J.R.*, App. D.C., 332 A.2d 58, cert. denied, 421 U.S. 1016, 95 S. Ct. 2425, 44 L. Ed. 2d 685 (1975).

IV. CHILD NEGLECT.

“Neglected child.” — The focus of an allegation under paragraph (9)(B) is on the condition of the child, not on the failure of the parent to exercise her lawful duties. In *re A.J.*, 120 WLR 725 (Super. Ct. 1992).

Government failed to sustain its burden of proving by a preponderance of evidence that respondent was neglected under paragraph (9)(B). In *re A.J.*, 120 WLR 725 (Super. Ct. 1992).

Government sustained its burden of proving by a preponderance of evidence that respondent was a neglected child under paragraph (9)(C). In *re A.J.*, 120 WLR 725 (Super. Ct. 1992).

The term “neglect,” warranting the protective intervention of the state, is by its very nature the equivalent of “negligence” — i.e., implying habits or omissions of duty, patterns of neglect, etc. In *re T.G.*, App. D.C., 684 A.2d 786 (1996).

“Neglected child” definition is not unconstitutionally vague. — Paragraph (9) of this section may be broad in its coverage, but it is not unconstitutionally vague. In *re B.K.*, App. D.C., 429 A.2d 1331 (1981).

Stepfather meets definition of custodian for “neglected child” purposes. In *re S.G.*, 116 WLR 1149 (Super. Ct. 1988).

Child neglect not a criminal offense. — Child neglect is not a criminal offense in the District of Columbia. *Raboya v. Shrybman & Assocs.*, 777 F. Supp. 58 (D.D.C. 1991).

Noncustodial parent. — The focus of inquiry under paragraph (9) does not depend on whether or not a parent has custody of the

children in question; the proper inquiry remains whether the children are without the statutory requirements of paragraph (9)(B) because those who have the legal obligation to insure the children's welfare have not exercised that obligation for any nonfinancial reason. In re B.C., App. D.C., 582 A.2d 1196 (1990).

Paragraph (9)(B) does not impose a lesser standard of care on a noncustodial parent. In re B.C., App. D.C., 582 A.2d 1196 (1990).

Finding required with respect to "neglected child." — Under this section, the court only needs to find that the children in question are without the statutory requirements; the court need not find that the parent abused, abandoned or mistreated his/her children. In re B.C., App. D.C., 582 A.2d 1196 (1990).

Neglect unrelated to financial status. — Where the neglect is completely unrelated to the financial status of the parent, it is proper for the government to meet its burden to prove lack of proper care and control without also providing an affirmative showing of the parent's financial status. In re D.C., App. D.C., 561 A.2d 477 (1989).

Lack of financial means may preclude finding. — Once the court finds the statutory requirements to be absent, the only excuse that can preclude a conclusion that the children are "neglected children" is a lack of financial means. In re B.C., App. D.C., 582 A.2d 1196 (1990).

Agency has exclusive supervisory responsibility once custody is transferred. — Once custody is transferred to the agency, the court relinquishes its authority to determine the appropriate measures needed to insure rehabilitation. The agency has exclusive supervisory responsibility over the juvenile absent a fresh delinquency determination. In re J.J., App. D.C., 431 A.2d 587 (1981).

Social Rehabilitation Administration has exclusive supervisory responsibility over juvenile committed to its custody and has the sole authority to determine the appropriateness of the aftercare program. In re J.M.W., App. D.C., 411 A.2d 345 (1980).

"Custodian." — "Custodian" is not a factual description of the living arrangements between someone and a child, rather, it refers to the relationship, legal custody, created or imposed by the law. In re B.C., App. D.C., 582 A.2d 1196 (1990).

Social worker is not a "custodian" in whom custody of a child involved in a juvenile proceeding can be placed pending a factfinding hearing. In re Banks, App. D.C., 306 A.2d 270 (1973).

Powers of legal custodian. — Paragraph (21) does not purport to be exclusive in defining powers of a legal custodian and the specific enumerated powers are indicated to be "included" within the custodian's powers; the included

power to train and discipline would appear to embrace duty of determining where and how training and discipline would be carried out. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Agency has no obligation to provide services until custody transferred. — Paragraph (21) of this section clearly assumes that the agency has no obligation to provide services, unless and until the court vests legal custody of the child with that agency. In re J.J., App. D.C., 431 A.2d 587 (1981).

Charity not chargeable with cost of committing mentally retarded child. — This subchapter furnishes no ground for charging a charitable organization, which arranges for a mentally retarded child's adoption, with the cost of her subsequent commitment. District of Columbia v. H.J.B., App. D.C., 359 A.2d 285 (1976).

Child refused medical attention held "neglected." — Infant child, with life-threatening heart condition, whose parents refuse to allow corrective surgery, may be adjudicated neglected child under paragraph (9)(B) of this section and committed for medical treatment under subsection (a) of § 16-2320. In re Adam L., 111 WLR 25 (Super. Ct. 1983).

Physical punishment. — In order for physical discipline to be acceptable, it must be administered by a parent as a considered response to misconduct and be applied in a tempered, controlled manner with as little violence and consequent possibility for actual physical injury as possible, given the age of the child and the attendant circumstances. In re U.F., 118 WLR 541 (Super. Ct. 1990).

Differences in disciplining children that are based on varying cultural or ethnic standards have no legitimate substantive role in the determination of whether corporal punishment of children is reasonable or excessive. In re U.F., 118 WLR 541 (Super. Ct. 1990).

A history of increasingly violent, unconsidered, almost reflexive parental reaction may well support a finding of abuse even where the specific incident which brought the case before the court did not result in an observably serious injury to the child, as the court must seek to protect the child from future risk of harm. In re U.F., 118 WLR 541 (Super. Ct. 1990).

Under the District of Columbia neglect statute it is permissible to consider the same factors relevant in a common law tort analysis in order to determine whether physical punishment of a child was unreasonable and, therefore, constituted neglect or abuse. In re U.F., 118 WLR 541 (Super. Ct. 1990).

Excessive corporal punishment. — The evidence of the frequent beatings of the mother's children, resulting in permanent physical scars, was plainly encompassed by the definition of excessive corporal punishment. In re J.A., App. D.C., 601 A.2d 69 (1991).

Choking. — Even if the trial court had not credited a child's testimony regarding the sexual aspects of the conduct toward her by her mother's live-in male companion, the fact that he choked her alone would be sufficient for a finding of neglect under paragraph (9)(A) of this section. In re S.L.E., App. D.C., 677 A.2d 514 (1996).

Sexual abuse. — The trial court's decision finding children neglected was proper and supported by evidence showing that sexual abuse of one child continued for a substantial period, on two occasions with a younger sibling present, the stepfather lied about the abuse, and he was intoxicated at the time of the abuse. In re S.G., App. D.C., 581 A.2d 771 (1990).

There was ample evidence in the record to support a finding of abuse within the meaning of paragraph (9)(A) of this section where the trial judge expressly credited a child's testimony that her mother's live-in male companion told her to take all of her clothes off, told her to touch his private parts, pulled her down and choked her, and threatened that he would kill her and her mother if she told her mother what had happened. In re S.L.E., App. D.C., 677 A.2d 514 (1996).

Drug use by parent. — A single instance of drug use by one parent in front of very small children (who were promptly removed by their aunt) does not make them neglected, especially where there is a non-drug abusing parent in the home and no evidence of any ill effects on the children. In re B.R., 119 WLR 957 (Super. Ct. 1991).

Incapacity or absence of one parent. — The incapacity or absence of one parent does not make children neglected per se when another, capable parent shares physical custody and responsibility for them and there is no evidence of actual or imminent harm to the children. In re B.R., 119 WLR 957 (Super. Ct. 1991).

Children left for extended periods of time. — Evidence of leaving children with relatives and other babysitters for extended periods of time did not amount to neglect where the children received adequate care and there was no imminent danger. In re B.R., 119 WLR 957 (Super. Ct. 1991).

Missed feedings not sufficient to demonstrate child abuse. — Evidence that establishes infant was upset because he was hungry and that this hunger resulted from missing anywhere from one to three feedings was not sufficient to demonstrate that child was neglected. In re A.S., App. D.C., 643 A.2d 345 (1994).

Failure of parent to ensure child's school attendance deemed neglect. — A child is neglected within the meaning of paragraph (9)(B) of this section where he had attended less than 30 days of school between ages

8 and 14, as the failure of the custodial parent to ensure regular school attendance amounted to a lack of proper parental care. In re LeShawn R., 114 WLR 1109 (Super. Ct. 1986).

V. PROCEDURAL AND APPELLATE ISSUES.

Nature of neglect proceedings. — Neglect proceedings are remedial and focus on the child and are therefore critically different from criminal prosecutions, which are primarily concerned with the allegedly abusive parent; nevertheless, in the area of joinder and severance, precedents in criminal cases provide some guidance. In re S.G., App. D.C., 581 A.2d 771 (1990).

Court must determine whether child's injury results from improper parental care. — In cases of alleged neglect involving deprivation to a child other than educational deprivation or lack of subsistence, the statute is clear on its face that the court must consider whether the injury or endangerment to the child results from improper parental care or control. In re LeShawn R., 114 WLR 1109 (Super. Ct. 1986).

Determination must be based on legally-admissible evidence. — In determining whether a child is a "child in need of supervision," the court may rely only on evidence that is legally admissible. In re D.M.C., App. D.C., 503 A.2d 1280 (1986).

Evidence of juvenile's school attendance record. — Admitting into evidence, and basing a finding of truancy upon, a document which purportedly set forth a juvenile's school attendance record during the first few months of the 1983-1984 school year was reversible error, where the District failed to lay an adequate foundation to justify the admission of the information within an exception to the hearsay rule. In re D.M.C., App. D.C., 503 A.2d 1280 (1986).

Applicability of the waiver provision of § 2-1355. — The waiver provision in § 2-1355 applies to a child who is the subject of a neglect proceeding. In re O.L., App. D.C., 584 A.2d 1230 (1990).

Waiver of parent's physician-patient privilege. — Waiver of the parent's physician-patient privilege in a neglect proceeding can occur only where the court determines that such waiver would be in the interest of justice. In re O.L., App. D.C., 584 A.2d 1230 (1990).

A determination that such a waiver would be in the interest of justice cannot be automatic; on the contrary, it requires the judicious exercise of discretion. In re O.L., App. D.C., 584 A.2d 1230 (1990).

In a child neglect proceeding based on the mother's alleged mental illness and drug abuse, the trial judge may, over the mother's objection, "waive" her physician-patient privilege with respect to past professional evaluations of her

mental condition. In re O.L., App. D.C., 584 A.2d 1230 (1990).

Parental responsibilities. — A change in legal custody, something that encompasses the rights and responsibilities of physical custody, does not extinguish a parent's parental responsibilities. In re B.C., App. D.C., 582 A.2d 1196 (1990).

Absence of alleged neglected child from jurisdiction. — Because the adjudication of neglect has significant potential collateral consequences, appeal is not moot where the alleged child victim is no longer within the jurisdiction of the trial court. In re E.R., App. D.C., 649 A.2d 10 (1994).

Revocation of protective supervision order. — The language of paragraph (19) authorizes the Family Division to revoke a protective supervision order at any time while the order is in effect. In re A.M., App. D.C., 589 A.2d 1252 (1991).

The fact that Congress chose to confer power on the court to revoke a protective supervision order at any time during the period of protective supervision through its definition of protective supervision, rather than by enacting a separate section, has no effect on the statutory scheme as a whole. In re A.M., App. D.C., 589 A.2d 1252 (1991).

Reversal of finding of neglect. — Where the government failed to meet its burden of proof that any neglect was not due to the lack of financial needs, the order with respect to ne-

glect was reversed, but in view of the intervening lapse of time since the children were taken into custody, the mandate of termination was stayed to permit the court to review the need for detention or shelter care, to allow time for the parties to effect the children's transition to the parents' home, or for the District to take such other action as the family's current circumstances and the children's best interest may have required. In re T.G., App. D.C., 684 A.2d 786 (1996).

Applicable period for appeals in delinquency cases. — The 30-day period of Rule 4 (a)(1) of the D.C. Court of Appeals governs appeals in delinquency cases where the child is alleged to be a child in need of supervision rather than the 10-day period for criminal cases. In re B.L.B., App. D.C., 432 A.2d 722 (1981).

Defendant did not waive his right to challenge trial court's ruling on construction of section defining "child" because he failed to obtain the ruling and file an appeal before he entered his guilty plea, since he informed the court of his concern as to whether the section authorized his prosecution as an adult before jeopardy attached and was assured that, although the court would go forward and accept the guilty plea, he could challenge the ruling on his status as a "child" at a later date. Logan v. United States, App. D.C., 483 A.2d 664 (1984).

§ 16-2302. Transfer of criminal matters to Family Division.

(a) If it appears to a court, during the pendency of a criminal charge and before the time when jeopardy would attach in the case of an adult, that a minor defendant was a child at the time of an alleged offense, the court shall forthwith transfer the charge against the defendant, together with all papers and documents connected therewith, to the Division. All action taken by the court prior to transfer of the case shall be deemed null and void unless the Division transfers the child for criminal prosecution under section 16-2307.

(b) If at the time of an alleged offense, a minor defendant was a child but this fact is not discovered by the court until after jeopardy has attached, the court shall proceed to verdict. If judgment has not been entered, the court shall determine on the basis of the criteria in section 16-2307(e) whether to enter judgment or to refer the case to the Division for disposition. If judgment has been entered, it shall not be set aside on the ground of the defendant's age unless the court, after hearing, determines that (1) neither the defendant nor his counsel, prior to the entry of judgment, had reason to believe that defendant was under the age of eighteen years, and (2) the defendant would not have been transferred for criminal prosecution if his age had been known and the procedure set forth in section 16-2307 had been followed. If the judgment is set aside, the case shall be referred to the Division for disposition.

The disposition and all prior proceedings in any court of any case referred to the Division for disposition pursuant to this section shall be subject to the confidentiality provisions of sections 16-2331 through 16-2336.

(c) The court making a transfer shall order the minor to be taken forthwith to the Division or to a place of detention designated for children by the Division. The Division shall then proceed as provided in this subchapter.

(d) Nothing in this section shall affect the jurisdiction of a court over a person twenty-one years of age or older. (Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 525, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2302.)

Section references. — This section is referred to in §§ 16-2312 and 23-563.

Transfer to Family Division does not preclude retransfer. — Transfer of a case to the Family Division under subsection (a) of this section does not preclude retransfer of a defendant's case for criminal prosecution under the provisions of § 16-2307. *Choco v. United States*, App. D.C., 383 A.2d 333 (1978).

Decision for adult trial is final order immediately appealable. — A determination that a defendant be tried as an adult is a final order and immediately appealable. *Choco v. United States*, App. D.C., 383 A.2d 333 (1978).

Right to juvenile disposition lost if not achieved before jeopardy attaches. — Because of the language of subsection (b) of this section, a defendant's asserted right to disposition in juvenile proceedings is forever lost if not

resolved in his favor before jeopardy has attached. *Choco v. United States*, App. D.C., 383 A.2d 333 (1978).

Probation. — A minor respondent who was a child at the time on an alleged offense falls under the jurisdiction of the Family Division, unless formally transferred for criminal prosecution. Consequently, no criminal conviction can result from the Family Division's disposition. Instead, a consent decree, order of adjudication, or order of disposition may be issued. Accordingly, the trial judge had no discretion to use the probation provisions in § 33-541(e). In *re D.F.S.*, App. D.C., 684 A.2d 1281 (1996).

Cited in *United States v. Williams*, 351 F. Supp. 223 (D.D.C. 1972); *Montgomery v. United States*, App. D.C., 521 A.2d 1150 (1987); In *re M.R.*, App. D.C., 525 A.2d 614 (1987); *Partlow v. United States*, App. D.C., 673 A.2d 642 (1996).

§ 16-2303. Retention of jurisdiction.

For purposes of this subchapter, jurisdiction obtained by the Division in the case of a child shall be retained by it until the child becomes twenty-one years of age, unless jurisdiction is terminated before that time. This section does not affect the jurisdiction of other divisions of the Superior Court or of other courts over offenses committed by a person after he ceases to be a child. If a minor already under the jurisdiction of the Division is convicted in the Criminal Division or another court of a crime committed after he ceases to be a child, the Family Division may, in appropriate cases, terminate its jurisdiction. (Dec. 23, 1963, 77 Stat. 587, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 525, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2303.)

Scope of court's authority. — The court possesses no authority which is inconsistent with or broader than statutory mandate, although it clearly retains continuing jurisdiction over a juvenile until he reaches the age of majority. In *re J.M.W.*, App. D.C., 411 A.2d 345 (1980).

Judicial modification of commitment order not authorized. — This section does not provide for a judicial modification of a commitment order, as this would extend the powers of

the court far beyond that which is expressly delegated by statute. In *re J.M.W.*, App. D.C., 411 A.2d 345 (1980).

Application of best interest of the child standard. — The best interest of the child standard applies where the government seeks to terminate the commitment of a neglected child because it concludes that the child cannot make effective use of the services provided in the juvenile system. In *re T.R.J.*, App. D.C., 661 A.2d 1086 (1995).

When the Superior Court has acquired jurisdiction of a neglected child and committed that child for care to the public agency responsible for the care of neglected children and is requested to terminate the child's commitment prior to his or her twenty-first birthday, it must first find that commitment is no longer necessary to safeguard the child's welfare and should frame that finding in conformity with the statute in terms of the child's best interest. *In re T.R.J.*, App. D.C., 661 A.2d 1086 (1995).

Cited in *In re C.I.T.*, App. D.C., 369 A.2d 171 (1977); *In re T.L.J.*, App. D.C., 413 A.2d 154 (1980); *In re J.A.G.*, App. D.C., 443 A.2d 13 (1982); *In re A.M.*, App. D.C., 589 A.2d 1252 (1991); *In re A.H.*, App. D.C., 590 A.2d 123 (1991); *Marrow v. United States*, App. D.C., 592 A.2d 1042 (1991); *In re D.H.*, App. D.C., 666 A.2d 462 (1995).

§ 16-2304. Right to counsel; party status.

(a) A child alleged to be delinquent or in need of supervision is entitled to be represented by counsel at all critical stages of Division proceedings, including the time of admission or denial of allegations in the petition and all subsequent stages. If the child and his parent, guardian, or custodian are financially unable to obtain adequate representation, the child shall be entitled to have counsel appointed for him in accordance with rules established by the Superior Court. In its discretion, the Division may appoint counsel for the child over the objection of the child, his parent, guardian, or other custodian.

(b)(1) When a child is alleged to be neglected or when the termination of the parent and child relationship is under consideration, the parent, guardian or custodian of the child named in the petition or in a motion to terminate is entitled to be represented by counsel at all critical stages of the proceedings, and, if financially unable to obtain adequate representation, to have counsel appointed in accordance with rules established by the Superior Court of the District of Columbia.

(2) The Division shall maintain a register of those attorneys who have expressed an interest in being appointed to represent parties or to serve as guardians ad litem in neglect proceedings, and shall attempt insofar as possible to make appointments from the register.

(3) If the child has been living with a person other than the parent, the person shall receive notice of the neglect or the termination proceedings and, if the child has been with them for twelve (12) months or more, the person may, upon his or her request, be designated a party to the proceedings. If the child has been living with the person less than twelve (12) months, upon the person's request the judge may, at his or her discretion, designate the person a party to the proceedings [proceedings] which pertain to the determination of neglect as defined in D.C. Code, section 16-2301. If the parent or other person party to the proceedings is financially unable to obtain adequate representation, counsel shall be appointed according to rules established by the Superior Court of the District of Columbia. The Superior Court shall in every case involving a neglected child which results in a judicial proceeding, including the termination of the parent and child relationship pursuant to subchapter III of this chapter, appoint a guardian ad litem who is an attorney to represent the child in the proceedings. The guardian ad litem shall in general be charged with the representation of the child's best interest.

(c) Prior to appointment of counsel under this section, the eligibility of a child or other party to be represented by counsel shall be determined by the

Division pursuant to rules established by the Superior Court of the District of Columbia.

(d) There are authorized to be appropriated such funds as may be necessary for the administration of this section. (Dec. 23, 1963, 77 Stat. 587, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 526, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2304; Sept. 23, 1977, D.C. Law 2-22, title IV, § 402, 24 DCR 3341; June 4, 1982, D.C. Law 4-114, § 2, 29 DCR 1699; Mar. 13, 1985, D.C. Law 5-129, § 2(b), 31 DCR 5192.)

Cross references. — As to authority and functions of Public Defender Service, see § 1-2702.

As to definition of terms in Chapter 21 of Title 6, Child Abuse and Neglect, see § 6-2101.

As to plan for furnishing representation of indigents in criminal cases, see § 11-2601.

As to representation of indigents in criminal cases, see § 11-2601 et seq.

As to definition of terms used in this chapter, see § 16-2301.

Section references. — This section is referred to in §§ 16-2306, 16-2308, and 16-2311 to 16-2313.

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 4-114. — Law 4-114, the "Assistance to Neglected Children Funding Authorization Act of 1982," was introduced in Council and assigned Bill No. 4-411, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 23, 1982, and April 6, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-177 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-129. — See note to § 16-2326.1.

Appropriations approved. — Public Law 104-194, 110 Stat. 2358, the District of Columbia Appropriations Act, 1997, provided that funds appropriated for expenses under this section for the fiscal year ending September 30, 1997, shall be available for obligations incurred under the Act in each fiscal year since inception in the fiscal year 1985.

Definitions applicable. — See note to § 16-2301.

"Legal representative." — The "legal representative" referred to § 16-2354(a) includes a court-appointed guardian ad litem. In re L.H., App. D.C., 634 A.2d 1230 (1993).

Pretrial detentions. — Proceedings in Family Court, by the District against a juvenile were not barred where the United States had previously charged defendant and detained him for 95 days but dismissed charges following the failure of the grand jury to indict. In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

Absence of probable cause hearing where juvenile not detained not fundamentally unfair. — In view of the precautionary measures required before the filing of a delinquency petition, the fact that no probable cause hearing is required where a juvenile is not ordered detained does not violate fundamental fairness. M.A.P. v. Ryan, App. D.C., 285 A.2d 310 (1971).

Proceeding to surrender parental rights. — Any attempt to surrender parental rights through voluntary relinquishment while the mother remains under the court's neglect jurisdiction must be regarded as a "critical stage" under subsection (b)(1) of this section, affording her a statutory right to counsel. In re D.R., App. D.C., 541 A.2d 1260 (1988).

Appointment of counsel. — For a discussion of the constitutionality of pro bono appointment of attorneys to neglect cases from a list of lawyers who have requested assignments of juvenile cases for which compensation is provided, see Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695 (D.C. Cir. 1984).

Counsel has an obligation either to comply with court order appointing him to represent an indigent parent in a child neglect case or to seek to have the order vacated. In re Marshall, App. D.C., 445 A.2d 5, cert. denied, 459 U.S. 875, 103 S. Ct. 166, 74 L. Ed. 2d 137 (1982).

Civil protection orders. — The right to appointed counsel does not extend to civil protection order proceedings instituted by a private party and involving a temporary custody determination. Cloutterbuck v. Cloutterbuck, App. D.C., 556 A.2d 1082 (1989).

Role of guardians ad litem ratified. — Council's action in approving the increase in compensation level to \$1,000 for termination of parental rights proceedings was a ratification of the role that guardians ad litem perform in termination of parental rights proceedings. In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

Guardian ad litem called as witness by opposing party. — Where guardian ad litem, who had been appointed as an advocate for the child, was called as a witness for an opposing party, new counsel should have been appointed to represent the child. S.S. v. D.M., App. D.C., 597 A.2d 870 (1991).

Where new counsel was not properly appointed after guardian ad litem was called as a witness by the opposition, since the judge's findings and conclusions did not emphasize evidence that was only offered by the guardian ad litem, but were an informed, independent judgment based on the entire record regarding the child's best interests, and counsel had the opportunity to object to the guardian ad litem appearing as a witness, and did not, there was not a miscarriage of justice. *S.S. v. D.M.*, App. D.C., 597 A.2d 870 (1991).

Termination of parental rights. — Section 16-2354(a) specifically authorizes the guardian ad litem, as legal representative for the child, to file a proceeding to terminate parental rights. In *re L.H.*, App. D.C., 634 A.2d 1230 (1993).

Natural father's rights. — Where a stepfather was accused of abusing his stepdaughter, it was proper for the court to appoint counsel for her natural father who should have a mean-

ingful right to be heard on what disposition would be most appropriate for his child in these circumstances. In *re S.G.*, App. D.C., 581 A.2d 771 (1990).

District is required to present evidence.

— The District must be a party to any neglect proceeding, and only the District is required to present evidence in support of the petition. In *re J.J.Z.*, App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994).

Cited in In *re T.W.*, App. D.C., 295 A.2d 69 (1972); In *re Gary H.*, 115 WLR 1201 (Super. Ct. 1987); In *re D.B.*, 117 WLR 665 (Super. Ct. 1989); In *re W.A.F.*, App. D.C., 573 A.2d 1264 (1990); In *re R.B.*, 118 WLR 2405 (Super. Ct. 1990); In *re A.H.*, App. D.C., 590 A.2d 123 (1991); In *re Baby Girl D.S.*, App. D.C., 600 A.2d 71 (1991); In *re J.J.Z.*, App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994); In *re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 16-2305. Petition; contents; amendment.

(a) Complaints alleging delinquency, need of supervision, or neglect shall be referred to the Director of Social Services who shall conduct a preliminary inquiry to determine whether the best interests of the child or the public require that a petition be filed. If judicial action appears warranted, under intake criteria established by rule of the Superior Court, the Director shall recommend that a petition be filed. If the Director decides not to recommend the filing of a petition, the complainant in a delinquency or neglect case shall have a right to have that decision reviewed by the Corporation Counsel, and the Director shall notify the complainant of such right of review. Complaints alleging neglect submitted by the Child Protective Services Division of the Department of Human Services shall be referred directly to the Corporation Counsel of the District of Columbia.

(b) Petitions initiating judicial action may be signed by any person who has knowledge of the facts alleged or, being informed of them, believes they are true, except that petitions alleging need of supervision may only be signed by the Director of Social Services, a representative of a public agency or a nongovernmental agency licensed and authorized to care for children, a representative of a public or private agency providing social service for families, a school official, or a law enforcement officer. Petitions shall be verified and verification may be upon information or belief.

(c) Each petition shall be prepared by the Corporation Counsel after an inquiry into the facts and a determination of the legal basis for the petition. If the Director of Social Services has refused to recommend the filing of a delinquency or neglect petition, the Corporation Counsel, on request of the complainant, shall review the facts presented and shall prepare and file a petition if he believes such action is necessary to protect the community or the interests of the child. Any decision of the Corporation Counsel on whether to file a petition shall be final.

(d) A petition shall be filed by the Corporation Counsel within seven days (excluding Sundays and legal holidays) after the complaint has been referred to the Director of Social Services, except as otherwise provided in section 16-2312. A petition shall set forth plainly and concisely the facts which give the Division jurisdiction of the child under section 11-1101(13). In delinquency cases the petition shall also state the specific statute or ordinance on which the charge is based. If delinquency or need of supervision is alleged, a statement shall be included in the petition that the child appears to be in need of care or rehabilitation. The petition shall contain such other facts and information as may be required by rules of the Superior Court.

(e) A petition may be amended by leave of the Division on motion of the Corporation Counsel or counsel for the child, at any time prior to the conclusion of the factfinding hearing. The Division shall grant the Corporation Counsel, the child, and his parent, guardian, or custodian notice of the amendment and, where necessary, additional time to prepare.

(f) The District of Columbia shall be a party to all proceedings under this subchapter. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 526, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2305; Sept. 23, 1977, D.C. Law 2-22, title I, § 110(b), 24 DCR 3341.)

Section references. — This section is referred to in § 6-2107.

Legislative history of Law 2-22. — See note to § 16-2301.

Definitions applicable. — See note to § 16-2301.

D.C. Law Review. — For symposium, "The Unnecessary Detention of Children in the District of Columbia — Pre-initial hearing detention: Are the Police Department and Social Services intake following the law?", see 3 D.C. L. Rev. 193 (1995).

Construction. — Subsection (f) of this section and § 16-2322(b) must be construed together. In re T.L.J., App. D.C., 413 A.2d 154 (1980).

Powers of District under subsection (f). — Subsection (f) of this section empowers the District of Columbia, through its chief law officer, the Corporation Counsel, to be a party to all Division proceedings covered by this subchapter, to represent the Social Rehabilitation Administration in actions brought against it and in actions instituted by it, or to initiate actions on behalf of the agency in matters of "public interest." In re T.L.J., App. D.C., 413 A.2d 154 (1980).

Guardian ad litem. — This section does not authorize the guardian ad litem, who must be appointed by the court to represent the child's best interest in every neglect proceeding pursuant to § 16-2304(b)(3), to file neglect petitions or to maintain such proceedings independently; the guardian ad litem represents the but in not accorded independent party status. In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, —

U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994).

Authority to prosecute in Corporation Counsel. — The authority to "prosecute" neglect cases is placed squarely upon the Office of the Corporation Counsel representing the District of Columbia Government. That Office's decision concerning whether or not to file a petition is final and unreviewable. In re D.B., 117 WLR 665 (Super. Ct. 1989).

The Corporation Counsel of the District of Columbia has the exclusive authority to file a neglect petition. In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994).

Although any person with knowledge of the facts or informed of them may sign a petition, each neglect petition must be prepared by the Corporation Counsel. In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994).

Termination of commitment. — The best interest of the child standard applies where the government seeks to terminate the commitment of a neglected child because it concludes that the child cannot make effective use of the services provided in the juvenile system. In re T.R.J., App. D.C., 661 A.2d 1086 (1995).

When the Superior Court has acquired jurisdiction of a neglected child and committed that child for care to the public agency responsible for the care of neglected children and is requested to terminate the child's commitment prior to his or her twenty-first birthday, it must first find that commitment is no longer necessary to safeguard the child's welfare and should

frame that finding in conformity with the statute in terms of the child's best interest. In re T.R.J., App. D.C., 661 A.2d 1086 (1995).

Juvenile charged with an act of delinquency is not involved in criminal prosecution. In re M.W.F., App. D.C., 312 A.2d 302 (1973).

Purpose of pleading. — The rationale that the purpose of pleading is to facilitate a proper decision on the merits has special significance in a juvenile court proceeding. In re J.R.G., App. D.C., 305 A.2d 529 (1973).

Verified petitions. — The filing of verified petition by authorized prosecuting authority eliminates necessity of preliminary hearing. M.A.P. v. Ryan, App. D.C., 285 A.2d 310 (1971).

Due process. — Petition given to a juvenile satisfies the due process requirement of adequate notice applicable to juvenile proceedings. In re M.D.J., App. D.C., 346 A.2d 733 (1975).

Time limitations. — A technical violation of the time limitations set forth in subsection (d) does not require automatic dismissal nor preclude the subsequent filing of a petition after dismissal of the case without prejudice for a violation of those time limits. In re D.H., App. D.C., 666 A.2d 462 (1995).

Neither the language of this section nor the legislative purpose precludes the government from refile a petition dismissed by the trial court without prejudice as a sanction for failure to file the petition within the time frame set forth in subsection (d). In re D.H., App. D.C., 666 A.2d 462 (1995).

Amended or new petitions. — When the rescission of a consent decree and reinstatement of underlying petition is due to the filing of a new petition, the child's liberty interest is adequately protected by the statutory procedures for filing the new petition; an adversary hearing is not required to determine probable cause for the new petition. In re C.Y., App. D.C., 466 A.2d 421 (1983).

An amendment of the petition changing the name of the robbery victim is within the Court's discretion. In re W.K., App. D.C., 323 A.2d 442 (1974).

An amendment of the petition changing the violation of federal law to a violation of District law is within the Court's discretion. In re J.R.G., App. D.C., 305 A.2d 529 (1973).

Offense charged in petition. — In order for a delinquency finding to stand, it must be based on an offense charged in the petition or, as in an adult criminal proceeding, on a crime which is a lesser-included offense of the one

charged. In re W.B.W., App. D.C., 397 A.2d 143 (1979); In re D.B.H., App. D.C., 549 A.2d 351 (1988).

Deteriorated family structure prompts further proceedings following finding of petition as insufficient. — Where a petition is insufficient to support an adjudication of a child as habitually disobedient and ungovernable, but where irrational consequences would flow from a forced reunion in an apparently deteriorated family structure, further proceedings as might be deemed just will be held. In re C.G.S., App. D.C., 372 A.2d 1017 (1977).

Use of phrase "social reasons" not adequate statement in dismissal of petition. — The use of the phrase "social reasons" alone does not fulfill the requirement that the Court, upon the request of the Corporation Counsel, state why it was in the interests of justice and the welfare of the child that the delinquency petition be dismissed. District of Columbia v. D.E.P., App. D.C., 311 A.2d 831 (1973).

Government's duty in dismissal of delinquency petition. — The government must be given an opportunity to address itself to the issue, when raised, of whether or not the interests of justice and the juvenile's welfare justify a dismissal of a delinquency petition. In re R.L.R., App. D.C., 310 A.2d 226 (1973).

District is required to present evidence. — The District must be a party to any neglect proceeding, and only the District is required to present evidence in support of the petition. In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994).

Juvenile adjudged "dependent" not entitled to new hearing on status. — A juvenile who has been determined to be a "dependent child" under a provision of former law is not entitled, under the 1970 amendment to this section, to a new hearing to look into his present status. I.B. v. District of Columbia Dep't of Human Resources, App. D.C., 287 A.2d 827 (1972).

Cited in In re Kossow, App. D.C., 393 A.2d 97 (1978); In re C.D., App. D.C., 437 A.2d 171 (1981); In re T.G.T., App. D.C., 515 A.2d 1086 (1986); In re A.B., App. D.C., 556 A.2d 645 (1989); In re W.A.F., App. D.C., 573 A.2d 1264 (1990); In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990); In re A.L.M., App. D.C., 631 A.2d 894 (1993); In re L.H., App. D.C., 634 A.2d 1230 (1993); In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

§ 16-2305.1. Findings.

The Council finds that:

(1) Juveniles who are not under proper supervision and control or who are arrested for certain nonviolent offenses are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others.

(2) It shall be the policy of the District of Columbia that with respect to these juveniles the District of Columbia shall be guided by the assumption that juveniles who previously have had little or no contact with the juvenile justice system and who do not represent a danger to the public safety may benefit from an alternative to adjudication that is noncriminal, reformatory and protective in nature.

(3) Accordingly, the District of Columbia recognizes the appropriateness of alternatives to adjudication, which may include diversion programs and services, for certain juveniles who are in need of supervision or who are arrested for certain nonviolent offenses. The remedies and procedures provided herein shall not be in derogation of parental rights and responsibilities under existing laws. (Apr. 9, 1997, D.C. Law 11-199, § 2(b), 43 DCR 4385.)

Legislative history of Law 11-199. — Law 11-199, the “Adjustment Process for Nonviolent Juvenile Offenders and Parent Participation in Court-Ordered Proceedings Act of 1996,” was introduced in Council and assigned Bill No. 11-622, which was referred to the Committee on the Judiciary. The Bill was adopted on first

and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-361 and transmitted to both Houses of Congress for its review. D.C. Law 11-199 became effective on April 9, 1997.

§ 16-2305.2. Preliminary probation conferences; adjustment process.

(a) For the purposes of this section, the term:

(1) “Adjustment process” means the process by which the Social Services Division and the Office of the Corporation Counsel may proceed where a determination is made that the filing of a delinquency or persons in need of supervision petition is not in the best interests of the child or public.

(2) “Nonviolent offenses” means those offenses identified as such by the Office of the Corporation Counsel in an interagency agreement with the Social Services Division, but shall not include a “crime of violence” as defined in section 1(f) of An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Code § 22-3201(f)), or possessory firearm offenses.

(b) Where the Director of Social Services recommends, after a preliminary inquiry is conducted pursuant to D.C. Code § 16-2305(a), that it is not in the best interests of the child or public to recommend the filing of a delinquency or persons in need of supervision petition, the Director of Social Services shall so recommend to the Office of the Corporation Counsel, and the Corporation Counsel shall make a determination of the suitability of the case for adjustment, which may include diversion. The Director of Social Services shall

permit any participant who is represented by a lawyer to be accompanied by the lawyer at any preliminary conference.

(c) In order to determine whether the case is suitable for adjustment, the Director of Social Services, in consultation with the Office of the Corporation Counsel, shall consider the following circumstances, among others:

(1) The age of the child;

(2) Whether the conduct allegedly involved:

(A) An act or acts causing or threatening to cause death, substantial pain, or serious physical injury to another;

(B) The use or knowing possession of a dangerous instrument or deadly weapon;

(C) The use or threatened use of violence to compel a person to engage in sexual intercourse, deviant sexual intercourse, or sexual contact;

(D) The use or threatened use of violence to obtain property;

(E) The use or threatened use of deadly physical force with the intent to restrain the liberty of another;

(F) The intentional starting of a fire or the causing of an explosion which resulted in damage to a building;

(G) A serious risk to the welfare and safety of the community; or

(H) An act which seriously endangered the safety of the child or another person;

(3) Whether there is a substantial likelihood that the child will not appear at scheduled conferences with the Social Services Division or with an agency to which he or she may be referred;

(4) Whether there is a substantial likelihood that the child will not participate in the diversion programs or services developed and recommended by the Social Services Division or cooperate during the adjustment process;

(5) Whether there is a substantial likelihood that in order to adjust the case successfully, the child would require services that could not be administered effectively in less than 6 months;

(6) Whether there is a substantial likelihood that the child will, during the adjustment process:

(A) Commit an act which, if committed by an adult, would be a crime; or

(B) Engage in conduct that endangers the physical or emotional health of the child or a member of the child's family or household; or

(C) Harass the complainant, victim, or person seeking to have a delinquency petition filed, or a member of that person's family or household, where demonstrated by prior conduct or threats;

(7) Whether there is pending another proceeding to determine whether the child is a child in need of supervision or a delinquent;

(8) Whether there have been prior adjustments or adjournments in contemplation of dismissal in other delinquency proceedings;

(9) Whether there has been a prior adjudication of the child as a delinquent child or child in need of supervision;

(10) Whether there is a substantial likelihood that the adjustment process would not be successful unless the child is temporarily removed from his or her

home and that such removal could not be accomplished without invoking the court process;

(11) Whether a proceeding has been or will be instituted against another person for acting jointly with the child; and

(12) Whether the juvenile case would otherwise have been petitioned by the Office of the Corporation Counsel.

(d) At the preliminary inquiry, the Director of Social Services shall inform each person entitled to be present of the function and limitations of, and the alternatives to, the adjustment process, and that:

(1) He or she has a right to participate in the adjustment process, which may include, but is not limited to, periodic drug testing, attendance at parenting classes, or participation in counseling, treatment, or educational programs;

(2) The Social Services Division is not authorized to and cannot compel any person to appear at any conference, produce any papers, or visit any place absent court order;

(3) The person seeking to have a delinquency petition filed is entitled to have access to the Office of the Corporation Counsel at any time for the purpose of requesting that a petition be filed;

(4) The adjustment process may continue for a period of 6 months and may be extended for an additional six months upon written application to the Director of Social Services and the Office of the Corporation Counsel and approval thereof by both;

(5) Statements made to the Social Services Division or the Office of the Corporation Counsel by the child or his or her parent shall not be admissible for any purpose during any subsequent court proceeding and are subject to the confidentiality provisions contained in this chapter; and

(6) If the adjustment process is commenced and not successfully concluded, the persons participating therein may be notified orally or in writing of that fact by the Social Services Division, that the case will be referred to the Office of the Corporation Counsel and that oral notification must be confirmed in writing. (Apr. 9, 1997, D.C. Law 11-199, § 2(b), 43 DCR 4385.)

Legislative history of Law 11-199. — See note to § 16-2305a.

§ 16-2306. Service of summons and petition.

(a) When a petition is filed, the Division shall set a time for initial appearance and shall direct the issuance of summonses. If delinquency or need of supervision is alleged, a summons, together with a copy of the petition, shall be served upon the child and upon his spouse (if any) and his parent, guardian, or other custodian. If neglect is alleged, the summons, together with a copy of the petition, shall be served on the parent, guardian, or other custodian of the child named in the petition. Where appropriate to the proper disposition of the case, the Division may direct service of summonses upon other persons. A summons issued pursuant to this section shall advise the parties of the right to counsel as provided in section 16-2304.

(b) Upon request of the Corporation Counsel, the Division may endorse upon the summons an order directing the parent, guardian, or other custodian of the child to appear personally at the hearing and directing the person having physical custody or control of the child to bring the child to the hearing.

(c) If it appears, from information presented to the Division, that there are grounds to take the child into custody as provided in section 16-2309, or that the child may leave or be removed from the jurisdiction of the Superior Court or will not be brought to the hearing, notwithstanding service of the summons, the Division may endorse upon the summons an order that the officer serving summons shall at once take the child into custody. If the child is taken into custody under this section, the provisions of sections 16-2309 to 16-2312 shall apply. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 527, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2306.)

Section references. — This section is referred to in §§ 16-2307, 16-2309, and 16-2327. (Super. Ct. 1987); In re L.J., App. D.C., 546 A.2d 429 (1988); In re R.B., 118 WLR 2405 (Super. Ct. 1990).

§ 16-2307. Transfer for criminal prosecution.

(a) Within twenty-one days (excluding Sundays and legal holidays) of the filing of a delinquency petition, or later for good cause shown, and prior to a factfinding hearing on the petition, the Corporation Counsel may file a motion, supported by a statement of facts, requesting transfer of the child for criminal prosecution, if —

(1) the child was fifteen or more years of age at the time of the conduct charged, and is alleged to have committed an act which would constitute a felony if committed by an adult;

(2) the child is sixteen or more years of age and is already under commitment to an agency or institution as a delinquent child;

(3) a minor eighteen years of age or older is alleged to have committed a delinquent act prior to having become eighteen years of age; or

(4) a child under 18 years of age is charged with the illegal possession or control of a firearm within 1000 feet of a public or private day care center, elementary school, vocational school, secondary school, college, junior college, or university, or any public swimming pool, playground, video arcade, or youth center, or an event sponsored by any of the above entities. For the purposes of this paragraph “playground” means any facility intended for recreation, open to the public, and with any portion of the facility that contains 1 or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards. For the purposes of this paragraph “video arcade” means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines. For the purposes of this paragraph “youth center” means any recreational facility or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provide athletic, civic, or cultural activities.

(b) Following the filing of the motion by the Corporation Counsel, summonses shall be issued and served in conformity with the provisions of section 16-2306.

(c) When there are grounds to believe the child is substantially retarded or mentally ill, the Division shall stay the proceedings for the purpose of obtaining an examination. After examination, the Division shall proceed to a determination under subsection (d) of this section unless it determines that the child is incompetent to participate in the proceedings, in which event it shall order the child committed to a mental hospital pursuant to section 16-2315 or section 24-301(a).

(d) Unless a commitment under subsection (c) of this section has intervened, the Division shall conduct a hearing on each transfer motion to determine whether to transfer the child for criminal prosecution. This hearing shall be held within ten days (excluding Sundays and legal holidays) of the filing of the transfer motion. The Division shall order the transfer if it determines that it is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation. A statement of the Division's reasons for ordering the transfer shall accompany the transfer order. The Division's findings with respect to each of the factors set forth in subsection (e) of this section relating to the public welfare and protection of the public security shall be included in the statement. This statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.

(e) Evidence of the following factors shall be considered in determining whether there are reasonable prospects for rehabilitating a child prior to his majority and whether it is in the interest of the public welfare to transfer for criminal prosecution:

- (1) the child's age;
- (2) the nature of the present offense and the extent and nature of the child's prior delinquency record;
- (3) the child's mental condition;
- (4) the child's response to past treatment efforts including whether the child has absconded from the legal custody of the Mayor or a juvenile institution;
- (5) the techniques, facilities, and personnel for rehabilitation available to the Division and to the court that would have jurisdiction after transfer; and
- (6) The potential rehabilitative effect on the child of providing parenting classes or family counseling for one or more members of the child's family or for the child's caregiver or guardian.

(e-1) For purposes of the transfer hearing the Division shall assume that the child committed the delinquent act alleged.

(e-2) There is a rebuttable presumption that a child 15 through 18 years of age who has been charged with any of the following offenses, should be transferred for criminal prosecution in the interest of public welfare and the protection of the public security:

- (1) Murder, forcible rape, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense;

(2) Any offense listed in paragraph (1) of this subsection and any other offense properly joinable with such an offense;

(3) Any crime committed with a firearm; or

(4) Any offense that if the child were charged as an adult would constitute a violent felony and the child has three or more prior delinquency adjudications.

(f) Prior to a transfer hearing, a study and report, in writing, relevant to the factors in subsection (e), shall be made by the Director of Social Services. This report and all social records that are to be made available to the judge at the transfer hearing shall be made available to counsel for the child and to the Corporation Counsel at least three days prior to the hearing.

(g) A judge who conducts a hearing pursuant to this section shall not, over the objection of the child for whom a motion to transfer was filed, participate in any subsequent factfinding proceedings relating to the offense.

(h) Transfer of a child for criminal prosecution terminates the jurisdiction of the Division over the child with respect to any subsequent delinquent act; except that jurisdiction of the Division over the child is restored if (1) the criminal prosecution is terminated other than by a plea of guilty, a verdict of guilty, or a verdict of not guilty by reason of insanity, and (2) at the time of the termination of the criminal prosecution no indictment or information has been filed for criminal prosecution for an offense alleged to have been committed by the child subsequent to transfer. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 527, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2307; Feb. 27, 1990, D.C. Law 8-71, § 2, 36 DCR 7746; May 15, 1993, D.C. Law 9-272, § 101, 40 DCR 796; Feb. 5, 1994, D.C. Law 10-68, § 20(b), 40 DCR 6311; Aug. 18, 1994, D.C. Law 10-150, § 2, 41 DCR 2594; Mar. 16, 1995, D.C. Law 10-227, § 3(b), 42 DCR 4.)

Section references. — This section is referred to in §§ 16-2302, 16-2310, 16-2313, 16-2315, 16-2316, 16-2328, 16-2333, 16-2334, 16-2339, 21-1114, and 24-301.

Effect of amendments. — D.C. Law 10-227 added (e)(6) and made minor stylistic changes.

Legislative history of Law 8-71. — Law 8-71, the "District of Columbia Public School Firearm Prohibition Act of 1989," was introduced in Council and assigned Bill No. 8-240, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1989, and October 24, 1989, respectively. Signed by the Mayor on November 2, 1989, it was assigned Act No. 8-108 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-272. — Law 9-272, the "Criminal and Juvenile Justice Reform Act of 1992," was introduced in Council and assigned Bill No. 9-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-401 and trans-

mitted to both Houses of Congress for its review. D.C. Law 9-272 became effective on May 15, 1993.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-150. — Law 10-150, the "Youth Facilities Firearm Prohibition Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-265, which was referred to the Committee on . The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-233 and transmitted to both Houses of Congress for its review. D.C. Law 10-150 became effective on August 18, 1994.

Legislative history of Law 10-227 — See note to § 16-2301.

D.C. Law Review. — For symposium, “The Unnecessary Detention of Children in the District of Columbia: Introduction”, see 3 D.C. L. Rev. No. 2, p. ix.

Constitutionality. — Subsection (e-1) is not unconstitutional. In re W.T.L., App. D.C., 656 A.2d 1123 (1995).

Exception to general rule created. — This section creates an exception to the general rule that a person accused of committing a delinquent act before his or her 18th birthday — which act would be criminal if committed by an adult — is accorded noncriminal treatment in the Family Division of the Superior Court. Logan v. United States, App. D.C., 483 A.2d 664 (1984).

Subsequent delinquent act. — The term “subsequent delinquent act” refers to an act which occurs after adult criminal charges have been filed. In re M.R., App. D.C., 525 A.2d 614 (1987).

Any delinquent act that occurs after the defendant has been charged is a subsequent delinquent act under subsection (h). Marrow v. United States, App. D.C., 592 A.2d 1042 (1991).

Defendant’s delinquent cocaine possession — an act committed after a judicially-approved warrant commanding his arrest for an enumerated offense — was a subsequent delinquent act for purposes of subsection (h), and should have been submitted for trial to the criminal court’s jurisdiction. Marrow v. United States, App. D.C., 592 A.2d 1042 (1991).

Discretion of court. — The decision whether to transfer a juvenile for prosecution as an adult must be committed to the trial court’s sound discretion. In re J.L.M., App. D.C., 673 A.2d 174 (1996).

Section 16-2301(3)(A) effects transfer under this section. — Section 16-2301(3)(A), by deeming an individual not to be a “child” when certain serious offenses are charged, in effect decrees by operation of law a “transfer” of that individual to the Criminal Division within the meaning of subsection (h) of this section, with the resulting termination of Family Division jurisdiction (subject to restoration as prescribed) over any subsequent delinquent act for which there is a criminal statute equally applicable to adults. In re C.S., App. D.C., 384 A.2d 407 (1977).

Once an individual who is 16 years of age or older has been charged by the United States Attorney with a crime pursuant to § 16-2301(3)(A), that individual shall be deemed transferred for criminal prosecution within the meaning of subsection (h) of this section, with the resulting termination of Family Division jurisdiction. In re M.R., App. D.C., 525 A.2d 614 (1987).

Requirements for transfer. — If the government can prove that there are no reasonable prospects for rehabilitation, but a respondent is able to rebut the subsection (e-2) public welfare and safety presumption, the court cannot transfer the respondent for adult prosecution because both prongs of subsection (d) must be satisfied before the transfer can be ordered. In re Medley, 123 WLR 1077 (Super. Ct. 1995).

Effect of transfer to Criminal Division. — When an individual is presented to the Criminal Division of the court, pursuant to the charging discretion allowed the prosecutor by statute, the court does not act in a “*parens patriae*” role as in the Family Division, but correspondingly, the accused receives the full panoply of protections available in adult court. Catlett v. United States, App. D.C., 545 A.2d 1202 (1988), cert. denied, 488 U.S. 1017, 109 S. Ct. 814, 102 L. Ed. 2d 803 (1989).

Retention of jurisdiction by Criminal Division. — Once a juvenile has been prosecuted in the Criminal Division as an adult under § 16-2301(3)(A), the Criminal Division retains jurisdiction over that juvenile until final disposition of all pending charges. Partlow v. United States, App. D.C., 673 A.2d 642 (1996).

Transfer under § 16-2302(a) does not preclude retransfer under this section. — Transfer of a case to the Family Division under § 16-2302(a) does not preclude retransfer of a defendant’s case for criminal prosecution under the provisions of this section. Choco v. United States, App. D.C., 383 A.2d 333 (1978).

Termination of prosecution. — Congress, in subsection (h) of this section, made “termination of the prosecution” (provided there has been no intervening charged offense) the event triggering restoration of Family Division jurisdiction. Since § 16-2301(3)(B) and subsection (h) of this section were enacted at the same time and are plainly in *pari materia*, the latter can inform the court’s understanding of the former. Partlow v. United States, App. D.C., 673 A.2d 642 (1996).

Retransfer following dismissal of adult prosecution. — Once the Criminal Division has jurisdiction, the Family Division loses jurisdiction over the minor with respect to any subsequent delinquent act. The Family Division reacquires jurisdiction, however, if the adult prosecution is terminated other than by a finding of guilt (or its equivalent), and if, at the time of that termination, the minor has not been charged already with the commission of an additional offense committed after the transfer. Montgomery v. United States, App. D.C., 521 A.2d 1150 (1987).

The second clause of subsection (h) was meant to leave undisturbed the Criminal Division’s jurisdiction over charges pending at the time of termination of the original adult prose-

cution. When appellant's assault charges were dismissed, he not only had been indicted for possession with intent to distribute, but also had been convicted of those charges over 2 years earlier. The policy reasons for the statutory scheme that preserves Criminal Division jurisdiction over pending charges are even more compelling when, as in this case, those charges have been reduced to a verdict of guilt. *Montgomery v. United States*, App. D.C., 521 A.2d 1150 (1987).

United States attorney's authority to charge juvenile as adult unfettered by section. — The United States attorney's authority to determine whether or not a juvenile, who is 16 years of age, and who is charged with a certain enumerated offense, should be charged as an adult is unfettered by this section. *Brown v. United States*, App. D.C., 343 A.2d 48 (1975).

Juveniles charged as adults not denied constitutional rights. — Juveniles in the 16 to 18-year-old age group who are charged with certain enumerated felonies are not denied procedural due process or equal protection of the laws because the United States attorney is authorized to proceed against them as adults. *United States v. Alexander*, 333 F. Supp. 1213 (D.D.C. 1971).

Pre-trial detention. — Proceedings in Family Court, by the District against a juvenile were not barred where the United States had previously charged defendant and detained him for 95 days but dismissed charges following the failure of the grand jury to indict. In re *K.E.W.*, 123 WLR 1769 (Super. Ct. 1995).

Transfer hearing not required following death of assault victim. — Although a person is initially petitioned as a juvenile on a charge of assault with intent to kill, a transfer hearing is not required following the subsequent death

of the victim since the juvenile can be directly charged as an adult with second degree murder. *Pendergrast v. United States*, App. D.C., 332 A.2d 919 (1975).

Probation. — A minor respondent who was a child at the time on an alleged offense falls under the jurisdiction of the Family Division, unless formally transferred for criminal prosecution. Consequently, no criminal conviction can result from the Family Division's disposition. Instead, a consent decree, order of adjudication, or order of disposition may be issued. Accordingly, the trial judge had no discretion to use the probation provisions in § 33-541(e). In re *D.F.S.*, App. D.C., 684 A.2d 1281 (1996).

Burden of proof of juvenile. — When a juvenile falls within the scope of subsection (e-2)(1) through (4), he or she, rather than the government, bears the burden of rebutting by a preponderance of the evidence, the presumption applicable to the "public welfare and protection of society" prong of the transfer test. In re *Medley*, 123 WLR 1077 (Super. Ct. 1995).

Prospects for rehabilitation. — A trial court permissibly may consider whether a juvenile has rebutted the presumption created by subsection (e-2) when deciding whether the District has satisfied its burden under subsection (d) to show no reasonable prospects for rehabilitation. In re *J.L.M.*, App. D.C., 673 A.2d 174 (1996).

Cited in *United States v. Logan*, 113 WLR 1609 (Super. Ct. 1985); In re *L.J.*, App. D.C., 546 A.2d 429 (1988); In re *Sealed Case (Juvenile Transf.)*, 893 F.2d 363 (D.C. Cir. 1990); *United States v. Hobbs*, App. D.C., 594 A.2d 66 (1991); *United States v. Hobbs*, 119 WLR 673 (Super. Ct. 1991); In re *T.R.J.*, App. D.C., 661 A.2d 1086 (1995); In re *M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 16-2308. Initial appearance.

The initial appearance, before a judge assigned to the Division, of a child named in a delinquency or need of supervision petition or of the parent, guardian, or custodian of a child named in a neglect petition shall be at the time set forth in the summons, which shall be not later than five days after the petition has been filed. At the initial appearance, the child and his parent, guardian, or custodian shall be advised of the contents of the petition and of the right to counsel as provided in section 16-2304. At the initial appearance the child, or in neglect cases the parent, guardian, or custodian, may admit or deny the allegations in the petition, but it shall not be necessary at the initial appearance for the Corporation Counsel to establish probable cause to believe that the allegations in the petition are true. At the initial appearance, the judge may set the time for the fact-finding hearing or continue the matter until a later time. Failure to hold the initial appearance at the time specified shall not be grounds for dismissal of the petition. This section shall not apply in any case where, prior to or at the time of the initial appearance, a detention or

shelter care hearing is required by section 16-2312. (Dec. 23, 1963, 77 Stat. 589, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 529, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2308.)

Absence of probable cause hearing where juvenile not detained not fundamentally unfair. — In view of precautionary measures required before the filing of a delinquency petition, including an inquiry by the

Corporation Counsel into the facts and law, the fact that no probable cause hearing is required where a juvenile is not ordered detained does not violate fundamental fairness. *M.A.P. v. Ryan*, App. D.C., 285 A.2d 310 (1971).

§ 16-2309. Taking into custody.

(a) A child may be taken into custody —

(1) pursuant to order of the Division under section 16-2306 or 16-2311;

(2) by a law enforcement officer when he has reasonable grounds to believe that the child has committed a delinquent act;

(3) by a law enforcement officer when he or she has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that the removal of the child from his or her surroundings is necessary;

(4) by a law enforcement officer after he or she has consulted with the Chief of the Child Protective Services Division of the Department of Human Services, or his or her designee, pursuant to § 6-2105 when the officer has reasonable grounds to believe that the child is suffering from illness or injury or otherwise is endangered and that the child's removal from his or her surroundings is necessary;

(5) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parent, guardian, or other custodian;

(6) by the Chief of the Child Protective Services Division of the Department of Human Services or his or her designee, upon written notification by the chief executive officer of a hospital located in the District of Columbia, that the child has resided in the hospital for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian or custodian of the child, as established by the hospital admission records, has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child; or

(7) by a law enforcement officer when the officer has reasonable grounds to believe that the child, who is not in school on a day when school is in session, is of compulsory school age as required by section 1(a) of An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Code § 31-402).

(b) A child under the age of 13 who is taken into custody by a law enforcement officer, other than an officer in the U.S. Marshals Service, shall remain in the immediate physical presence of a law enforcement officer pending release or delivery pursuant to section 16-2311(a). (Dec. 23, 1963, 77 Stat. 589, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 529, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2309; Sept. 23, 1977, D.C. Law 2-22, title I,

§ 110(c), 24 DCR 3341; Aug. 13, 1986, D.C. Law 6-140, § 2(a), 33 DCR 3827; June 8, 1990, D.C. Law 8-134, § 2(b), 37 DCR 2613; Feb. 5, 1994, D.C. Law 10-68, § 20(c), 40 DCR 6311; Aug. 25, 1994, D.C. Law 10-159, § 2, 41 DCR 4884; Apr. 9, 1997, D.C. Law 11-255, § 18(f), 44 DCR 1271.)

Section references. — This section is referred to in §§ 6-2103, 6-2105, 6-2124, 16-2306, and 16-2311.1.

Effect of amendments. — D.C. Law 11-255 made a capitalization change in (a)(7).

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 6-140. — See note to § 16-2310.1.

Legislative history of Law 8-134. — See note to § 16-2301.

Legislative history of Law 10-68. — See note to § 16-2307.

Legislative history of Law 10-159. — Law 10-159, the “Police Truancy Enforcement Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-248, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-275 and transmitted to both Houses of Congress for its review. D.C. Law 10-159 became effective on August 25, 1995.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act

of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Definitions applicable. — See note to § 16-2301.

D.C. Law Review. — For symposium, “The unnecessary detention of children in the District of Columbia — Juvenile detention to ‘protect’ children from neglect”, see 3 D.C. L. Rev. 373 (1995).

Status of child under section. — A child has been neither arrested nor detained under this section. In re C.Y., App. D.C., 466 A.2d 421 (1983).

Cited in Jackson v. District of Columbia, App. D.C., 412 A.2d 948 (1980); Turner v. District of Columbia, App. D.C., 532 A.2d 662 (1987); Simpson v. United States, App. D.C., 576 A.2d 1336 (1990); United States v. Simpson, 119 WLR 1229 (Super. Ct. 1991); In re A.L.M., App. D.C., 631 A.2d 894 (1993).

§ 16-2310. Criteria for detaining children.

(a) A child shall not be placed in detention prior to a factfinding hearing or a dispositional hearing unless he is alleged to be delinquent or in need of supervision and unless it appears from available information that detention is required —

- (1) to protect the person or property of others or of the child, or
- (2) to secure the child’s presence at the next court hearing.

(b) A child shall not be placed in shelter care prior to a factfinding hearing or a dispositional hearing unless it appears from available information that shelter care is required —

- (1) to protect the person of the child, or
- (2) because the child has no parent, guardian, custodian, or other person or agency able to provide supervision and care for him, and the child appears unable to care for himself and that
- (3) no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.

(c) The criteria for detention and shelter care provided in this section, as implemented by rules of the Superior Court, shall govern the decisions of all persons responsible for determining whether detention or shelter care is warranted prior to the factfinding hearing.

(d) Whenever a child has been placed in shelter care, the child's parent, guardian or custodian shall be permitted visitation at least weekly unless it appears to the judge that such visitation rights would create an imminent danger to or be detrimental to the well-being of the child, in which case, the judge shall either prescribe a schedule of visitation rights or order that visitation rights not be allowed.

(e) Fact finding hearings for children placed in secure detention shall be held within the time limits provided in this subsection.

(1) Except as provided in this subsection, whenever a child has been placed in secure detention prior to a fact finding hearing pursuant to D.C. Code §§ 16-2310 through 16-2313, the fact finding hearing set forth in D.C. Code § 16-2316 shall commence not later than 30 days from the date at which the Division authorized the child to be detained pursuant to D.C. Code § 16-2312, unless the child is charged with murder, assault with intent to kill, first degree sexual abuse, burglary in the first degree, or robbery while armed, in which case the fact finding hearing shall commence not later than 45 days from the date at which the Division authorized the child to be securely detained.

(2) Upon motion of the Corporation Counsel, for good cause shown, or by or on behalf of the child consistent with the Rules of the Superior Court, the fact finding hearing of a child securely detained may be continued, and the child continued in secure detention for additional periods not to exceed 30 days each.

(3) In determining whether good cause has been shown as required by paragraph (2) of this subsection, the Division shall take into account, among other appropriate matters, and shall state its findings on the record, as to whether:

(A) There has been or will be a delay resulting from other proceedings concerning the child, including, but not limited to, examinations to determine the mental competency or physical capacity of the child; from a hearing with respect to other charges against the child; from any interlocutory or expedited appeal; from the making, or consideration by the Division, of any pretrial motions; and from any proceeding relating to the transfer of the child pursuant to D.C. Code § 16-2307;

(B) Any essential witness is absent or unavailable. For purposes of this subparagraph, an essential witness shall be considered absent when his or her whereabouts are unknown or cannot be determined by due diligence and shall be considered unavailable when his or her presence for the hearing cannot be obtained by due diligence;

(C) Despite the exercise of due diligence, necessary autopsies, medical examinations, fingerprint examinations, ballistic tests, drug analysis, or other scientific tests have not been completed; or

(D) The ends of justice served by continuing the period of detention outweigh the interests of the child and public in a speedy trial.

(4) Upon motion by or on behalf of the child, a child in secure detention shall be released from custody if the fact finding hearing is not commenced within the time period set forth in this subsection. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 529, Pub. L. 91-358, title I,

§ 121(a); 1973 Ed., § 16-2310; Sept. 23, 1977, D.C. Law 2-22, title IV, § 403, 24 DCR 3341; Apr. 9, 1997, D.C. Law 11-179, § 2, 43 DCR 4243.)

Section references. — This section is referred to in §§ 16-2306, 16-2311, and 16-2312.

Effect of amendments. — D.C. Law 11-179 added (e).

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 11-179. — Law 11-179, the “Juvenile Detention and Speedy Trial Act of 1996,” was introduced in Council and assigned Bill No. 11-475, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-329 and transmitted to both Houses of Congress for its review. D.C. Law 11-179 became effective on April 9, 1997.

Application of Law 11-179. — Section 3 of D.C. Law 11-179 provided that the act shall be applicable 120 days from the effective date of the act. D.C. Law 11-179 became effective on April 9, 1997.

Definitions applicable. — See note to § 16-2301.

D.C. Law Review. — For symposium, “The Unnecessary Detention of Children in the District of Columbia — Clear and convincing evidence: The standard required to support pretrial detention of juveniles pursuant to D.C. Code § 16-2310”, see 3 D.C. L. Rev. 213 (1995).

For symposium, “The Unnecessary Detention of Children in the District of Columbia — Substituting secure detention for shelter care: An illegal deprivation of liberty”, see 3 D.C. L. Rev. 223 (1995).

For symposium, “The Unnecessary Detention of Children in the District of Columbia — Juvenile detention law in the District of Columbia: A practitioner’s guide”, see 3 D.C. L. Rev. 281 (1995).

For symposium, “The Unnecessary Detention of Children in the District of Columbia — Juvenile detention to ‘protect’ children from neglect”, see 3 D.C. L. Rev. 373 (1995).

For symposium, “The Unnecessary Detention of Children in the District of Columbia — Understanding the overrepresentation of

youths with disabilities in juvenile detention”, see 3 D.C. L. Rev. 389 (1995).

Social worker is not a “custodian” in whom custody of a child involved in a juvenile proceeding can be placed pending a fact finding hearing. In re Banks, App. D.C., 306 A.2d 270 (1973).

Status of child under section. — A child has been neither arrested nor detained under this section. In re C.Y., App. D.C., 466 A.2d 421 (1983).

Safety of the community. — In making a decision respecting detention, the disposition judge may consider the safety of the community as well as the juvenile’s needs, and the informed exercise of discretion in that regard will rarely be disturbed on appeal. In re L.J., App. D.C., 546 A.2d 429 (1988).

Detention upheld. — It was constitutionally permissible to detain a juvenile with no prior record given the nature and circumstances of the charge against him. In re M.R., 117 WLR 1121 (Super. Ct. 1989).

Trial court’s refusal to lift a detention order issued pursuant to this section was upheld where appellant would have been brought to trial earlier but for his attorney’s illness, where a decision concerning appellant’s original request for relief could not have been rendered until less than a month before the scheduled trial date, and where a decision on the constitutionality of appellant’s detention would have had a strong advisory element unlikely leading to his release. In re K.H., App. D.C., 647 A.2d 61 (1994).

Cited in In re C.S., App. D.C., 384 A.2d 407 (1977); In re O.M., 117 WLR 1253 (Super. Ct. 1989); In re D.R.M., App. D.C., 570 A.2d 796 (1990); Simpson v. United States, App. D.C., 576 A.2d 1336 (1990); In re A.H., App. D.C., 590 A.2d 123 (1991); In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994); In re M.M.D., App. D.C., 662 A.2d 837 (1995); In re K.E.W., 123 WLR 1769 (Super. Ct. 1995); In re S.J., App. D.C., 686 A.2d 1024 (1996).

§ 16-2310.1. Separation of young children detained prior to a hearing.

The Director of the Department of Human Services and the Director of Social Services shall ensure that each child at risk who is detained, however briefly, pursuant to section 16-2311(a)(2) or (b)(1) shall be physically separated at all times, except during transportation, from children or other detainees 13 years of age or older, from any child under the age of 13 who has been detained on the

ground that there is probable cause to believe the child has committed a crime of violence, as defined in section 23-1331(4), or in any other manner deemed to ensure the safety of the child. Neither the Department of Human Services nor the Director of Social Services shall deliver a child under the age of 13 to the custody of the United States Marshals Service. For the purposes of this section, "child at risk" means a child under the age of 13 or any child 13 years of age or older who, because of his or her size or physical stature, is determined to be especially physically or psychologically vulnerable to attacks by other children. (Aug. 13, 1986, D.C. Law 6-140, § 2(c), 33 DCR 3827.)

Section references. — This section is referred to in § 16-2311.1.

Legislative history of Law 6-140. — Law 6-140, the "Juvenile Protective Act of 1986," was introduced in Council and assigned Bill No. 6-250, which was referred to the Committee

on the Judiciary. The Bill was adopted on first and second readings on May 27, 1986, and June 10, 1986, respectively. Signed by the Mayor on June 13, 1986, it was assigned Act No. 6-178 and transmitted to both Houses of Congress for its review.

§ 16-2311. Release or delivery to Family Division.

(a) A person taking a child into custody shall with all reasonable speed —

(1) release the child to his parent, guardian, or custodian upon a promise to bring the child before the Division when requested by the Division, unless the child's placement in detention or shelter care appears required as provided in section 16-2310;

(2) bring a child alleged in need of supervision or delinquent before the Director of Social Services; or

(3) bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical or evidentiary purposes and may order the child retained at the hospital subject to a further order of the Metropolitan Police Department of the District of Columbia, the Chief of the Child Protective Services Division of the Department of Human Services, or the Superior Court of the District of Columbia; or

(4) bring a child alleged to be a neglected child to the Chief of the Child Protective Services Division of the Department of Human Services.

Any person taking a child into custody shall give prompt notice to the Corporation Counsel and to the parent, guardian, or custodian (if known) together with the reasons for custody.

(b)(1) When a child is brought before the Director of Social Services, the Director shall in all cases review the need for detention or shelter care prior to the admission of the child to the place of detention or shelter care. The child shall be released to his parent, guardian, or custodian unless the Director of Social Services finds that detention or shelter care is required under section 16-2310. If the child is not released, the Director of Social Services shall advise the child of the right to counsel as provided in section 16-2304, and if the child is under the age of 13, shall immediately deliver the child to the custody of the Director of the Department of Human Services. Under no circumstances shall the Director of Social Services deliver a child under the age of 13 to the custody of the United States Marshals Service.

(2) when a child is brought before the Chief of the Child Protective Services Division of the Department of Human Services, the Chief shall review

the need for shelter care prior to the admission to shelter care. If shelter care is required the Chief shall select the most appropriate placement for the child. If the Chief determines that shelter care is not required the Chief may recommend to the Metropolitan Police Department of the District of Columbia the release of the child to his or her parent, guardian or custodian. When a child is being held in a hospital the case shall be reviewed by the Chief. If the Chief determines that shelter care is not required, he or she shall recommend to said Police the release of the child to his or her parent, guardian, or custodian. If the Chief determines there is a need for shelter care but there is not a medical need requiring hospitalization, the Chief shall secure the appropriate shelter care.

(c) If a parent, guardian, or custodian fails, when requested, to bring the child to the Division as provided in subsection (a)(1), the Division may issue a warrant directing that the child be taken into custody and brought before the Division.

(d) A person taking a child into custody or a public agency having temporary care pending a detention or shelter care hearing may bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical, psychiatric, or evidentiary purposes and may authorize such diagnosis or emergency treatment. Routine medical treatment shall not be authorized unless a parent cannot be consulted. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 530, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2311; Sept. 23, 1977, D.C. Law 2-22, title I, § 110(d), 24 DCR 3341; Aug. 13, 1986, D.C. Law 6-140, § 2(b), 33 DCR 3827.)

Section references. — This section is referred to in §§ 6-2105, 16-2306, 16-2309, 16-2310, 16-2310.1, 16-2311.1, and 16-2312.

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 6-140. — See note to § 16-2310.1.

Definitions applicable. — See note to § 16-2301.

Waiver of certain constitutional rights waives right of prompt presentment before Director. — A child's waiver of his rights

to counsel and to refrain from self-incrimination, coupled with his agreement to discuss the offense and make a statement, constitutes a temporary waiver of his right to be promptly presented before the Director of Social Services. In re F.D.P., App. D.C., 352 A.2d 378 (1976).

Cited in Jackson v. District of Columbia, App. D.C., 412 A.2d 948 (1980); In re K.H., App. D.C., 647 A.2d 61 (1994); In re M.M.D., App. D.C., 662 A.2d 837 (1995); In re S.J., App. D.C., 686 A.2d 1024 (1996).

§ 16-2311.1. Rules.

The Mayor shall issue rules to implement the provisions of section 16-2309(b), section 16-2310.1, section 16-2311(b)(1), and section 16-2311.1 within 90 days from August 13, 1986. These rules shall be submitted for a 30-day period of review by the Council of the District of Columbia, excluding Saturdays, Sundays, holidays, and days that pass during Council recess. (Aug. 13, 1986, D.C. Law 6-140, § 2(e), 33 DCR 3827.)

Section references. — This section is referred to in § 16-2310.

Legislative history of Law 6-140. — See note to § 16-2310.1.

Delegation of authority pursuant to Law 6-140. — See Mayor's Order 86-192, October 27, 1986.

§ 16-2312. Detention or shelter care hearing; intermediate disposition.

(a) When a child is not released as provided in section 16-2311 —

(1) a detention or shelter care hearing shall be commenced not later than the next day (excluding Sundays) after the child has been taken into custody or transferred from another court as provided by section 16-2302; and

(2) a petition shall be filed at or prior to the detention or shelter care hearing.

(b) Prompt notice of the detention or shelter care hearing shall be given, if delinquency or need of supervision is alleged, to the child, and to his spouse (if any), parent, guardian, or custodian, if he can be found, or, if neglect is alleged, to the child, and to the parent, guardian, or custodian named in the petition if he can be found. Counsel for the child, and in neglect cases counsel for the parent, guardian, or custodian, shall be entitled to a copy of the petition prior to the hearing.

(c) At the commencement of the hearing the judge shall advise the parties of the right to counsel, as provided in section 16-2304, and shall appoint counsel if required. He shall also inform them of the contents of the petition and shall afford the child, or in a neglect case, the parent, guardian, or custodian, an opportunity to admit or deny the allegations in the petition. He shall then hear from the Corporation Counsel to determine whether the child should be placed or continued in detention or shelter care under the criteria in section 16-2310. The child and his parent, guardian, or custodian shall have a right to be heard in their own behalf.

(d)(1) At the conclusion of the hearing, the judge shall —

(A) order detention or shelter care, setting forth in writing his reasons therefor, if he finds that the child's detention or shelter care is required under the criteria in section 16-2310; or

(B) order the child released if he finds that the child's detention or shelter care is not required under such criteria.

(2) If a child is ordered released under paragraph (1)(B) of this subsection, the judge may impose one or more of the following conditions:

(A) Placement of the child in the custody of a parent, guardian, or custodian or under supervision of a person or organization agreeing to supervise him.

(B) Placement of restrictions on the child's travel, activities, or place of abode during the period of release.

(C) Any other condition reasonably necessary to assure the appearance of the child at a factfinding hearing or his protection from harm, including a requirement that the child return to the physical custody of the parent, guardian, or custodian after specified hours.

(e) When a judge finds that a child's detention or shelter care is required under the criteria of section 16-2310, he shall then hear evidence presented by the Corporation Counsel to determine whether there is probable cause to believe the allegations in the petition are true. The child, his parent, guardian or custodian may present evidence on the issues and be heard in their own behalf.

(f) When a judge finds there is probable cause to believe the allegations in the petition are true, he shall order the child to be placed or continued in detention or shelter care and set forth his reasons. When a judge finds that there is not probable cause to believe the allegations in the petition are true, he shall order the child to be released.

(g) The Division at a detention or shelter care hearing may not postpone the determination of whether detention or shelter care is required. For good cause shown, however, the Division may grant a continuance of any other part of the hearing (including the filing of a petition) for a period not to exceed five days.

(h) On motion by or on behalf of the child, a child in custody shall be released from custody if his detention or shelter care hearing is not commenced within the time set herein.

(i) If a child is not released after his detention or shelter care hearing and the parent, guardian or custodian did not receive notice thereof, the Division may, in the interest of justice, conduct a new hearing in accordance with rules prescribed by the Superior Court.

(j) Upon objection of the child or his parent, guardian or custodian, a judge who conducted a detention or shelter care hearing shall not conduct a factfinding hearing on the petition. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 530, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 160-2312.)

Section references. — This section is referred to in §§ 3-801, 16-2305, 16-2306, 16-2308, and 116-2328.

Custodian. — A social worker is not a "custodian" in whom custody of a child involved in a juvenile proceeding can be placed pending a fact-finding hearing. In re Banks, App. D.C., 306 A.2d 270 (1973).

Delayed filing of petition. — The statutory authorization of a 5-day continuance for the filing of a petition is consistent with fundamental fairness and comports with due process requirements. In re T.G.T., App. D.C., 515 A.2d 1086 (1986).

In the ordinary course the government must file a petition prior to or at the initial hearing, but that upon a clear showing of good cause, the Court may permit the government to defer filing the petition of up to five days. In re T.G.T., App. D.C., 515 A.2d 1086 (1986).

Detention prior to filing of petition. — This section should be construed to give the trial court the discretion to grant a continuance of up to five days for the filing of the petition. In order to secure such a continuance, the government must make a clear showing that the continuance will serve a legitimate government objective. The juvenile respondent may not be detained or placed in shelter care during such a continuance unless a respondent has received reasonably specific notice of the nature of the charges. In re T.G.T., App. D.C., 515 A.2d 1086 (1986).

Detention during pendency of federal

charges. — Proceedings in Family Court, by the District against a juvenile were not barred where the United States had previously charged defendant and detained him for 95 days but dismissed charges following the failure of the grand jury to indict. In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

Absence of probable cause hearing where juvenile not detained not fundamentally unfair. — In view of the precautionary measures required before the filing of a delinquency petition, including an inquiry by the Corporation Counsel into the facts and law, the fact that no probable cause hearing is required where a juvenile is not ordered detained does not violate fundamental fairness. M.A.P. v. Ryan, App. D.C., 285 A.2d 310 (1971).

Complaining witness as hostile witness. — A complaining witness can only be considered presumptively hostile to the juvenile's interest at the hearing to determine whether probable cause of delinquency exists. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Nonappearance of complaining witness does not violate Sixth Amendment. — The fact that a hearing to determine probable cause of delinquency is held, even though the complaining witness does not appear, does not deprive the juvenile of his Sixth amendment right to confront the witnesses against him. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Probable cause. — After an initial hearing, if a change in release of conditions may result in detention, the respondent shall not be de-

tained without a finding that there is probable cause to believe the allegations are true. In re S.J., App. D.C., 686 A.2d 1024 (1996).

Rights of delinquency respondent at probable cause hearing. — A delinquency respondent has the same basic rights in the probable cause hearing as an alleged adult offender does in a preliminary examination,, but the respondent's right to present evidence and be heard does not connote the right to discover who the government's witnesses will be. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Establishment of probable cause. — Probable cause that child is delinquent may be established solely by hearsay testimony. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Reasons for entry of detention order. — The reasons for entering detention order cannot be phrased in statutory language. In re M.L. DeJ., App. D.C., 310 A.2d 834 (1973).

Interlocutory appeal. — The Division's probable cause determination of delinquency is subject to review by interlocutory appeal. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Expedited appeal procedure. — The references in § 16-2328(a) to this section and to the "entry of the [Family] Division's order" make clear that an expedited appeal procedure applies to an original order of detention under this section, not to subsequent orders denying reconsideration of the detention order. In re K.H., App. D.C., 647 A.2d 61 (1994).

Detention order upheld. — It was constitutionally permissible to detain a juvenile with no prior record given the nature and circumstances of the charge against him. In re M.R., 117 WLR 1121 (Super. Ct. 1989).

Detention order not upheld. — The trial court was without authority to order the deten-

tion of juvenile for five days without a finding that there was probable cause to believe that the allegations in the petition were true. In re S.J., App. D.C., 686 A.2d 1024 (1996).

Purpose of subsection (j). — Subsection (j) of this section operates to assure that the judge who must make the ultimate finding of guilty or not guilty is not predisposed towards guilty by having been exposed to testimony which may not be offered or may be inadmissible in the fact-finding hearing. In re W.N.W., App. D.C., 343 A.2d 55 (1975).

Recusal not required. — The judge conducting suppression hearing is not required to excuse himself from fact-finding hearing. In re M.D.J., App. D.C., 346 A.2d 733 (1975).

Where neither the child nor his attorney, where both of whom are present at the pretrial detention hearing, request the judge to excuse himself, he does not err in failing to excuse himself from conducting the fact-finding hearing. In re V.L.M., App. D.C., 340 A.2d 818 (1975).

Recusation issues not raised below is not assertable on appeal. — Where there is no objection to the fact that the same judge presided at the detention hearing, the suppression hearing and the fact-finding hearing, this issue cannot be asserted on appeal. In re L.J.W., App. D.C., 370 A.2d 1333 (1977).

Cited in In re C.S., App. D.C., 384 A.2d 407 (1977); In re B.P., App. D.C., 397 A.2d 974 (1979); In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994); In re S.J., App. D.C., 632 A.2d 112 (1993); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 16-2313. Place of detention or shelter.

(a) A child who is alleged to be neglected and who is in custody may be placed at any time prior to disposition, only in —

- (1) a foster home;
- (2) a group home, youth shelter, or other appropriate home for nondelinquent children; or

(3) another facility for shelter care designated by the Division, including an appropriate facility operated by the District of Columbia.

No child alleged to be neglected may be placed in a facility described in paragraph (3) of subsection (b) of this section.

(b) A child who is alleged to be in need of supervision or (except as provided in subsection (d) or (e)) is alleged to be delinquent and who is in custody may be detained at any time prior to disposition only in —

- (1) a foster home;
- (2) a group home, youth shelter, or other appropriate home for allegedly delinquent children; or

(3) a detention home for allegedly delinquent children or children alleged to be in need of supervision, designated by the Division, including an appropriate facility operated by the District of Columbia.

Unless the Division shall by order so authorize, no child may be detained in a facility described in paragraph (3) if it would result in his commingling with children who have been adjudicated delinquent and committed by order of the Division.

(c) A child in detention or shelter care may be temporarily transferred to a medical facility for physical care and may, on order of the Division, be temporarily transferred to a facility for mental examination or treatment.

(d) Except as provided in subsection (e), no child under eighteen years of age may be detained in a jail or other facility for the detention of adults, unless transferred as provided in section 16-2307. The appropriate official of a jail or other facility for the detention of adults shall inform the Superior Court immediately when a child under the age of eighteen years is received there (other than by transfer) and shall (1) deliver him to the Director of Social Services upon request, or (2) transfer him to a detention facility described in subsection (b)(3).

(e) A child sixteen years of age or older who is alleged to be delinquent and who is in detention, whose conduct constitutes a menace to other children, and who cannot be controlled, may on order of the Division be transferred to a place of detention for adults, but shall be kept separate from adults.

(f) The department or agency having custody, pursuant to a shelter care order, of a child alleged to be a neglected child shall give notice, which may be oral, of any change in the placement of the child to the child's parent, the child's guardian ad litem and the child's foster parent, if any, at least forty-eight (48) hours prior to the change in placement, except that in the case of an emergency, notice shall be given no later than twenty-four (24) hours (excluding Saturdays, Sundays and legal holidays) after the change. Notice need not be given to the parent where the Division has found that visitation would be detrimental to the child or the Division has determined that the parent should not be apprised of the child's location. Upon the request of any person entitled to notice under this subsection, the department or agency having legal custody of the child shall afford an opportunity for an administrative hearing to review the proposed change in the placement of the child, except that the department or agency need not conduct such a hearing if the requestor does not qualify as a party pursuant to D.C. Code, section 16-2304. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 531, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2313; Sept. 23, 1977, D.C. Law 2-22, title IV, § 404, 24 DCR 3341.)

Section references. — This section is referred to in §§ 6-2125, 16-2310, and 16-2328.

Legislative history of Law 2-22. — See note to § 16-2301.

Definitions applicable. — See note to § 16-2301.

Designation of facility. — A court may not

designate a facility as an appropriate detention home for placement of children pursuant to subsection (b)(3). In re Savoy, 113 WLR 553 (Super. Ct. 1985).

Cited in In re M.R., App. D.C., 525 A.2d 614 (1987); District of Columbia v. Jerry M., App. D.C., 571 A.2d 178 (1990); In re W.L., App. D.C., 603 A.2d 839 (1991).

§ 16-2314. Consent decree.

(a) At any time after the filing of a delinquency or need of supervision petition and prior to adjudication at a factfinding hearing, the Division may, on motion of the Corporation Counsel or counsel for the child, suspend the proceedings and continue the child under supervision, without commitment, under terms and conditions established by rules of the Superior Court. Such a consent decree shall not be entered unless the child is represented by counsel and has been informed of the consequences of the decree; nor shall it be entered over the objection of the child or of the Corporation Counsel.

(b) A consent decree shall remain in force for six months unless the child is sooner discharged by the Director of Social Services. Upon application of the Director of Social Services or an agency supervising the child made prior to the expiration of the decree, a consent decree may, after notice and hearing, be extended for not more than six additional months by order of the Division.

(c) If prior to the expiration of the decree or discharge by the Director of Social Services, the child fails to fulfill the express conditions of the decree or a new delinquency or need of supervision petition is filed concerning the child, the original petition under which the decree was filed may, in the discretion of the Corporation Counsel following consultation with the Director of Social Services, be reinstated. The child shall thereafter be held accountable on the original petition as if the consent decree had never been entered.

(d) If a child completes the period of continuance under supervision in accordance with the consent decree or is sooner discharged by the Director of Social Services, the Division shall dismiss the original petition. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 532, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2314.)

Consent decrees. — The availability of a consent decree does not take the place of a judicial dismissal where the continuation of a delinquency proceeding is not in the best interests of either justice or the individual child. In re M.C.F., App. D.C., 293 A.2d 874 (1972).

Use of phrase "social reasons" not adequate statement in dismissal of petition. — The use of the phrase "social reasons" alone does not fulfill the requirement that the court, upon the request of the Corporation Counsel, state why it was in the interests of justice and the welfare of the child that the delinquency petition be dismissed. District of Columbia v. D.E.P., App. D.C., 311 A.2d 831 (1973).

Opportunity for government to address interests of justice and child's welfare. — The government must be given an opportunity to address itself to the issue, when raised, of whether or not the interests of justice and the child's welfare justify a dismissal of the peti-

tion. In re R.L.R., App. D.C., 310 A.2d 226 (1973).

District's interest in consent decrees. — The District has an interest in the fulfillment of the rehabilitative purposes of a consent decree. In re C.Y., App. D.C., 466 A.2d 421 (1983).

Rescission of consent decree. — The decision to rescind a consent decree and reinstate the original petition is discretionary with the Corporation Counsel. In re C.Y., App. D.C., 466 A.2d 421 (1983).

When the rescission of a consent decree and the reinstatement of the underlying petition is due to the filing of a new petition, the child's liberty interest is adequately protected by the statutory procedures for filing the new petition; an adversary hearing is not required to determine probable cause for the new petition. In re C.Y., App. D.C., 466 A.2d 421 (1983).

Cited in In re L.J., App. D.C., 546 A.2d 429 (1988).

§ 16-2315. Physical and mental examinations.

(a) At any time following the filing of a petition, on motion of the Corporation Counsel or counsel for the child, or on its own motion, the Division may order a child to be examined to aid in determining his physical or mental condition.

(b)(1) Wherever possible a physical or mental health examination shall be conducted on an outpatient basis, but the Division may, if it deems necessary, order the child admitted as an inpatient to a suitable medical facility for the purpose of examination.

(2) The Division may order a child admitted as an inpatient to a suitable medical facility for the purpose of a mental health examination only after a psychiatrist examines the child and makes a written finding that the child is in need of a mental health examination which cannot be effectively provided on an outpatient basis. The written finding of the psychiatrist shall be a part of the Division's order. These procedures for the inpatient mental health examination of a child shall not apply if the child is subject to the emergency hospitalization provisions of section 21-521.

(3) Hospitalization for an examination shall be for a period of not more than twenty-one (21) days, except that the Division may, for good cause shown, grant extensions which may not exceed twenty-one (21) days in the aggregate.

(c)(1) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to participate in proceedings under the petition by reason of mental illness or at least moderate mental retardation as defined in section 6-1902(b) [6-1902(2)], it shall, except as provided in subsection (2), suspend further proceedings and the Corporation Counsel shall initiate commitment proceedings pursuant to chapter 5 or 11 of title 21.

(2) If a motion for transfer for criminal prosecution has been filed pursuant to section 16-2307 and the Division determines that a child alleged to be delinquent is incompetent to participate in the transfer proceedings by reason of mental illness, it shall suspend further proceedings and order the child confined to a suitable hospital or facility for the mentally ill until his competency is restored. If prior to the time the child reaches the age of 21 it appears that he will not regain his competency to participate in the proceedings, the Corporation Counsel shall initiate commitment proceedings pursuant to chapter 5 of title 21.

(3) If, as a result of mental examination, the Division determines that a child alleged to be in need of supervision is incompetent to participate in proceedings under the petition by reason of mental illness or at least moderate mental retardation as defined in section 6-1902(2), it shall suspend further proceedings. If proceedings are suspended, the Corporation Counsel may initiate commitment proceedings pursuant to chapter 5 or 11 of title 21.

(d) The results of an examination under this section shall be admissible in a transfer hearing pursuant to section 16-2307, in a dispositional hearing under this subchapter, or in a commitment proceeding under chapter 5 or 11 of title 21. The results of examination may be admitted into evidence at a

factfinding hearing to aid the Division in determining a material allegation of the petition relating to the child's mental or physical condition, but not for the purpose of establishing a defense of insanity.

(e)(1) At any time following the filing of a petition which alleges a neglected child as defined by D.C. Code, section 16-2301(9)(C) the Division may, on its own motion or the motion of any party, for good cause shown, order the mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue.

(2) Following an adjudication that a child is neglected, the Division may, on its own motion or the motion of any party, order a mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue.

(3) The Division may order additional mental examinations to be performed by independent experts upon a showing by any party that a prior examination is inadequate.

(4) The results of the mental or physical examination shall not be admissible evidence in the factfinding hearing unless the allegations contained in the petition set forth facts which support a petition pursuant to D.C. Code, section 16-2301(9)(C).

(5) The results of the mental or physical examination shall be admissible at a dispositional hearing.

(6) The results of the mental or physical examination shall not be admissible as evidence in any criminal proceedings. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 533, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2315; Sept. 23, 1977, D.C. Law 2-22, title IV, § 405, 24 DCR 3341; Mar. 5, 1981, D.C. Law 3-140, §§ 2, 3, 27 DCR 4558.)

Section references. — This section is referred to in §§ 16-2307 and 16-2321.

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 3-140. — Law 3-140, the "Inpatient Health Examination of Youth Act of 1980," was introduced in Council and assigned Bill No. 3-220, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on July 29, 1980, and September 16, 1980, respectively. Signed by the Mayor on October 2, 1980, it was assigned Act No. 3-261 and transmitted to both Houses of Congress for its review.

Definitions applicable. — See note to § 16-2301.

Constitutionality of section. — The demands of the due process and equal protection clauses are fully satisfied by proceedings, pursuant to this section, which are fundamentally fair. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

"Mental examination" defined. — Neither subsection (e)(1) of this section itself, nor its legislative history, provides any special or unusual definition for "mental examination."

Thus, under ordinary principles of statutory construction, the term must be given its usual and customary meaning in the relevant field of human endeavor. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

Examination of parent, guardian or custodian. — Information concerning the mental health of a mother must be obtained through subsection (e)(1) of this section rather than § 2-1355. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

Subsection (e)(1) of this section is a limited provision designed to secure a thorough examination of a custodian whose mental capacity is the subject of a neglect petition. Section 16-2359(e) is a much broader provision sweeping aside the husband-wife privilege and the doctor-patient privilege as regards any evidence which may be offered in the course of a termination hearing regardless of whether it was obtained through a subsection (e)(1) examination or otherwise and regardless of whether it concerns the child's custodian or other involved persons. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

From its plain terms, it is clear that subsection (e) of this section necessarily entails a

significant degree of intrusion into confidential information concerning a parent's mental health. The examination provided for by this subsection is not voluntary; nor is it comparable to an examination of a personal injury plaintiff under Super. Ct. Civ. R. 35 where, if the plaintiff refuses to submit to the examination, the appropriate remedy is normally dismissal of the case. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

A mental examination ordered under subsection (e)(1) of this section normally includes review of records of past mental health treatment of the patient in question, and the appointing order thus overcomes the doctor-patient privilege with respect to that treatment. While the court, in ordering examinations under this section, may impose some restrictions with respect to the review of such records, an order which carries no such restrictions should properly be construed as permitting access to any past medical records of the patient. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

Subsection (e) is not inconsistent with the broad grant of authority granted by the language of § 2-1355. In re D.H., 117 WLR 2109 (Super. Ct. 1989).

Procedure for determining the mental competency of a juvenile. — The determination of mental competency of a juvenile is one of those instances where the procedure followed in adult criminal prosecutions must be applied to juvenile delinquency proceedings. The right not to be tried or convicted while incompetent is a fundamental right of a juvenile in juvenile delinquency proceedings. In re W.A.F., App. D.C., 573 A.2d 1264 (1990).

Since the right not to be tried while incompetent is a due process right, the competency standard established in *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) is applicable to juvenile delinquency proceedings unless the juvenile system adequately protects that right, and the incompetency standard in paragraph (c)(1), together with other procedures in the juvenile system, does not do so. In re W.A.F., App. D.C., 573 A.2d 1264 (1990).

No determination of criminal responsibility. — A juvenile fact-finding hearing does not result in a determination of criminal responsibility. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

Preclusion of insanity defense. — Precluding a juvenile from raising an insanity defense at a fact-finding hearing denies him no right that is otherwise accorded an adult. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

This section bars an insanity defense in juvenile delinquency proceedings. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

Treatment equivalent to insanity defense. — This section provides a special treatment for the mentally ill juvenile offender equivalent to the insanity defense. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

Child's mental health considered. — The Family Division must consider, at the dispositional hearing, the mental health of the child at the time of the offense, as well as at the time of such hearing. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

Standard of incompetency. — The standard of incompetency is defined differently in adult proceedings or proceedings involving juveniles subject to transfer to adult courts under § 24-301(a) than it is in juvenile proceedings under subsection (c) of this section. In re W.F., 116 WLR 1913 (Super. Ct. 1988).

Retarded juveniles. — This section prescribes a standard of incompetency for juvenile delinquency proceedings which is precisely the same as the standard required for commitment of mentally retarded juveniles under D.C. Code §§ 21-1114 and 6-1926. In both instances, the respondent must be "at least moderately mentally retarded," as defined in § 6-1902(2). The result of this symmetry is that a child offender will receive treatment through either the juvenile division or a facility for the mentally retarded. In re W.F., 116 WLR 1913 (Super. Ct. 1988).

Standard of incompetency prescribed by this section applies to criminal proceedings against a mildly retarded juvenile, thus he will be judged competent to stand trial under this section and would not be released because he fell outside the standard for commitment under § 6-1924. In re W.F., 116 WLR 1913 (Super. Ct. 1988).

Cited in *Christopher B. v. Barry*, 715 F. Supp. 1143 (D.D.C. 1989); In re O.L., App. D.C., 584 A.2d 1230 (1990); In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S., 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994).

§ 16-2316. Conduct of hearings; evidence.

(a) The Division shall, without a jury, hear and adjudicate cases involving delinquency, need of supervision, or neglect. The Corporation Counsel shall present evidence in support of all petitions arising under this subchapter and otherwise represent the District of Columbia in all proceedings.

(b) Evidence which is competent, material, and relevant shall be admissible at factfinding hearings. Evidence which is material and relevant shall be admissible at detention hearings, transfer hearings under section 16-2307, and dispositional hearings.

(c) Where the petition alleges a child is a neglected child by reason of abuse, evidence of illness or injury to a child who was in the custody of his or her parent, guardian, or custodian for which the parent, guardian or custodian can give no satisfactory explanation shall be sufficient to justify an inference of neglect.

(d) Where the petition alleges a child is abandoned as referred to in section 16-2301(9)(A), as amended by this act, the following evidence shall be sufficient to justify an inference of neglect:

(1) the child is a foundling whose parents have made no effort to maintain a parental relationship with the child and reasonable efforts have been made to identify the child and to locate the parents for a period of at least four (4) weeks since the child was found;

(2) the child's parent gave a false identity at the time of the child's birth, since then has made no effort to maintain a parental relationship with the child and reasonable efforts have been made to locate the parent for a period of at least four (4) weeks since his or her disappearance;

(3) the child's parent, guardian or custodian is known but has abandoned the child in that he or she has made no reasonable effort to maintain a parental relationship with the child for a period of at least four (4) months; or

(4) the child has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child did not undertake any action or make any effort to maintain a parental, guardianship, or custodial relationship or contact with the child.

(e) All hearings and proceedings under this subchapter shall be recorded by appropriate means. Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings arising under this subchapter. Only persons necessary to the proceedings shall be admitted, but the Division may, pursuant to rule of the Superior Court, admit such other persons (including members of the press) as have a proper interest in the case or the work of the court on condition that they refrain from divulging information identifying the child or members of his family involved in the proceedings.

(f) If the Division finds that it is in the best interest of the child, it may temporarily exclude him from any proceeding except a factfinding hearing. If the petition alleges neglect, the child may also be temporarily excluded from a factfinding hearing. In any case, counsel for the child may not be excluded. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 533, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2316; Sept. 23, 1977, D.C. Law 2-22, title I, § 110(e), 24 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 4(o), 35 DCR 147; June 8, 1990, D.C. Law 8-134, § 2(c), 37 DCR 2613; Feb. 5, 1994, D.C. Law 10-68, § 20(d), 40 DCR 6311.)

Section references. — This section is referred to in § 16-2310.

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-134. — See note to § 16-2301.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

References in text. — "This act," referred to in the introductory paragraph of subsection (d), is the Act of September 23, 1977, D.C. Law 2-22 which is codified as § 2-1351 et seq., § 6-2101 et seq., and § 16-2301 et seq.

Definitions applicable. — See note to § 16-2301.

Constitutionality. — The fact that the Division hears and adjudicates cases involving delinquency without a jury is not violative of due process or the Sixth Amendment. In re J.T., App. D.C., 290 A.2d 821, cert. denied, 409 U.S. 986, 93 S. Ct. 339, 34 L. Ed. 2d 252 (1972).

Subsection (c) is not constitutionally void for vagueness. In re L.E.J., App. D.C., 465 A.2d 374 (1983).

Custody. — "Custody" as employed in subsection (c) is not unconstitutionally vague and it means at least as much as "legal custody" in § 16-2301(21). In re L.E.J., App. D.C., 465 A.2d 374 (1983).

Subsection (c) permissive. — The inference created by subsection (c) is permissive, not mandatory. In re L.E.J., App. D.C., 465 A.2d 374 (1983).

Juvenile adjudged "dependent" not entitled under 1970 amendment to new hearing on status. — A juvenile who has been determined to be a "dependent child" under a provision of former law is not entitled, under the 1970 amendment of this section, to a new hearing to look into his present status. I.B. v. District of Columbia Dep't of Human Resources, App. D.C., 287 A.2d 827 (1972).

Delinquency charges not criminal prosecution. — A child charged with an act of

delinquency is not involved in a criminal prosecution. In re M.W.F., App. D.C., 312 A.2d 302 (1973).

Admission of other persons. — To determine whether a person can be admitted into a delinquency proceeding, the court must decide whether the applicant has a "proper interest in the case or the work of the court," and if so, whether the juvenile's anonymity will be compromised if the applicant is permitted to attend the proceedings. In re M.A.M., 124 WLR 173 (Super. Ct. 1996).

Rights of journalists and others. — Members of the press have a proper interest in attending juvenile proceedings; however, other people can also have a proper interest. In re M.A.M., 124 WLR 173 (Super. Ct. 1996).

Procedure for determining the mental competency of a juvenile. — The determination of mental competency of a juvenile is one of those instances where the procedure followed in adult criminal prosecutions must be applied to juvenile delinquency proceedings. The right not to be tried or convicted while incompetent is a fundamental right of a juvenile in juvenile delinquency proceedings. In re W.A.F., App. D.C., 573 A.2d 1264 (1990).

Since the right not to be tried while incompetent is a due process right, the competency standard established in *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) is applicable to juvenile delinquency proceedings unless the juvenile system adequately protects that right, and the incompetency standard in § 16-2315(c)(1), together with other procedures in the juvenile system, does not do so. In re W.A.F., App. D.C., 573 A.2d 1264 (1990).

Voluntariness of statement. — A juvenile's statement is not, per se, involuntary absent the presence of a parent or counsel, as some juveniles who commit criminal acts are essentially as sophisticated, or more so, as adults. In re J.F.T., App. D.C., 320 A.2d 322 (1974).

Where, on the occasion of each of several prior arrests, a child is informed of his rights and testifies that he understood his rights, he can be said to understand his rights when they are read to him on his latest arrest. In re M.D.J., App. D.C., 346 A.2d 733 (1975).

Where a child initiates contact with the police, is familiar with the criminal justice system, attempts to link another person to the crime under investigation, is repeatedly given Miranda warnings and later evidences his ability to invoke his Miranda rights when he chose to do so, any admissions he gives are voluntary and not the product of adolescent fright or despair. In re T.T.T., App. D.C., 365 A.2d 366 (1976).

Where the police continue to interrogate a child after he indicates he wants counsel, any confession made and evidence obtained as a

result of such confession are inadmissible. In re R.A.H., App. D.C., 314 A.2d 133 (1974).

Grant of immunity in “any criminal case” extends to juvenile proceedings. — A statutory grant of immunity against the use in “any criminal case” of testimony which a person claiming the privilege against self-incrimination has been compelled to give extends to proceedings under this section. In re Grand Jury Proceedings, 491 F.2d 42 (D.C. Cir. 1974).

Harm not cognizable by writ of habeas corpus. — Where an adjudication as a “child in need of supervision” is invalidated and where the commitment ordered as a result of that adjudication has elapsed, there is no present harm cognizable by a writ of habeas corpus. Brown v. Yeldell, 487 F.2d 1210 (D.C. Cir. 1973).

Disclosure of juvenile’s identity. — The proscription against disclosure of a juvenile’s identity represents a legislative intention to authorize admission of the press only if there is reasonable assurance that the primary goal of protecting the child’s anonymity can be achieved. In re J.D.C., App. D.C., 594 A.2d 70 (1991).

Where the government moves to dismiss a neglect petition on the specific ground that it cannot adduce sufficient evidence to satisfy its burden of proof, and there is no showing that the motion is not made in good faith, the court has no alternative but to grant the motion. In re D.B., 117 WLR 665 (Super. Ct. 1989).

Cited in McAdoo v. United States, App. D.C., 515 A.2d 412 (1986); In re M.R., App. D.C., 525 A.2d 614 (1987); In re A.B., App. D.C., 556 A.2d 645 (1989); N.H. v. District of Columbia, App. D.C., 569 A.2d 1179 (1990); In re U.F., 118 WLR 541 (Super. Ct. 1990); In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990); In re F.H., 118 WLR 2725 (Super. Ct. 1990); United States v. Rogers, 118 WLR 2725 (Super. Ct. 1990); Johnson v. United States, App. D.C., 597 A.2d 917 (1991); In re J.J.Z., App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994); In re S.J., App. D.C., 632 A.2d 112 (1993).

§ 16-2317. Hearings, findings; dismissal.

(a) Except as otherwise provided by statute or court rule, all motions shall be heard at the time of the factfinding hearing.

(b) After a factfinding hearing on the allegations in the petition, the Division shall make and file written findings in all cases as to the truth of the allegations, and in neglect cases, he shall also make and file written findings as to whether the child is neglected. If the Division finds that —

(1) in the case of a delinquency petition, that the allegations have not been established by proof beyond a reasonable doubt; or

(2) in the case of a need of supervision or neglect petition, that the allegations have not been established by the preponderance of the evidence, the Division shall dismiss the petition and order the child released from any detention or shelter care or other restriction previously ordered. If the proceedings are not terminated after the factfinding hearing, the Division shall review the need for detention or shelter care of the child.

(c) If the Division finds in a factfinding hearing that —

(1) the allegations in a delinquency petition have been established by proof beyond a reasonable doubt; or

(2) the allegations in a need of supervision or neglect petition have been established by the preponderance of the evidence, the Division, after giving the notice required by subsection (e) of this section, shall proceed to hold a dispositional hearing. The Division may postpone a dispositional hearing to await the predisposition study and report of the Director of Social Services required by section 16-2319. In the absence of evidence to the contrary, a finding of the commission of an act which would constitute a criminal offense if committed by an adult is sufficient to sustain a

finding of need for care or rehabilitation in delinquency and need of supervision cases.

(d) If the Division finds that the child is not in need of care or rehabilitation it shall terminate the proceedings and discharge the child from detention, shelter care, or other restriction previously ordered.

(e) The Division shall give prompt notice of any dispositional hearing as follows:

(1) In delinquency and need of supervision cases, to the child, his spouse (if any), and his parent, guardian, or custodian.

(2) In neglect cases, to the child and to the parent, guardian, or custodian named in the petition if he can be found. (July 29, 1970, 84 Stat. 534, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2317; Feb. 5, 1994, D.C. Law 10-68, § 20(e), 40 DCR 6311.)

Section references. — This section is referred to in §§ 3-801, 16-2319, and 16-2320.

Legislative history of Law 10-68. — See note to § 16-2316.

Dependent child. — Where a minor has been adjudged a “dependent child,” she continues in that same status and there is no necessity for the court to make a “neglected child” finding in its ultimate determination of custody. In re N.M.S., App. D.C., 347 A.2d 924 (1975).

Delinquency adjudication process. — A delinquency adjudication consists of 2 steps: A fact-finding hearing which must be held to determine whether the allegations of the petition are true and then, if such determination is made, a dispositional hearing to decide whether the child is in need of care or rehabilitation and, if so, what disposition should be made. In re M.C.F., App. D.C., 293 A.2d 874 (1972).

Dismissal by Division. — Family Division has the authority to dismiss a delinquency petition at a dispositional hearing if the Court finds that a child who committed a delinquent act is, nonetheless, not in need of care and rehabilitation, and thus is not a delinquent child. In re C.S. MCP, App. D.C., 514 A.2d 446 (1986).

Consent decree. — The availability of consent decree does not take the place of a judicial dismissal where the continuation of a delinquency proceeding is not in the best interests of either justice or the individual child. In re M.C.F., App. D.C., 293 A.2d 874 (1972).

Social reasons. — The use of the phrase “social reasons” alone does not fulfill the requirement that the Court, upon the request of the Corporation Counsel, state why it was in the interests of justice and the welfare of the child that the delinquency petition be dismissed. *District of Columbia v. D.E.P.*, App. D.C., 311 A.2d 831 (1973).

Court has power to close delinquency case without a finding for social reasons. In re M.C.F., App. D.C., 293 A.2d 874 (1972).

The government must be given an opportunity to address itself to the issue, when raised, of whether or not the interests of justice and the juvenile’s welfare justify a dismissal of a delinquency petition. In re R.L.R., App. D.C., 310 A.2d 226 (1973).

Double jeopardy. — A child whose counsel secures an oral ruling of acquittal on a criminal charge waives any potential double jeopardy claim when his counsel acquiesces in a continuation of the hearing. In re J.A.H., App. D.C., 315 A.2d 825 (1974).

A hearing does not terminate until actual written entry of judgment for double jeopardy purposes; until then, the Court is free to reconsider its prior rulings. In re J.A.H., App. D.C., 315 A.2d 825 (1974).

Delinquency adjudication warranted. — A delinquency adjudication is warranted for child found carrying a pistol without a license. In re E.F.B., App. D.C., 320 A.2d 95 (1974).

Child discharged where presumption of need for care or rehabilitation rebutted.

— While there is a statutory presumption that the commission of a crime shows the need for care or rehabilitation, where such presumption is successfully rebutted the child must be discharged. In re M.C.F., App. D.C., 293 A.2d 874 (1972).

Division to determine need of care and treatment for mentally ill child. — This section requires that if the Family Division finds that the child was mentally ill at the time of the offense, but at the time of disposition was fully restored to mental health, the Division would then be required to determine whether, in view of all the facts and circumstances, the child is or is not in need of care and treatment. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

Standard of proof in neglect proceedings. — The preponderance of the evidence standard of proof in neglect proceedings does not violate procedural due process because the statutory scheme for child neglect involves tem-

porary, third party placement or supervised placement of a child with the parent for a two-year period, followed by annual reviews after notice and hearing and a new determination that the child is neglected. *N.H. v. District of Columbia*, App. D.C., 569 A.2d 1179 (1990).

The standard of proof in cases under subsection (a) is by a preponderance of the evidence rather than beyond a reasonable doubt, as required in a criminal case. *In re J.J.Z.*, App. D.C., 630 A.2d 186 (1993), cert. denied, — U.S. —, 114 S. Ct. 1651, 128 L. Ed. 2d 370 (1994).

Burden of proof in neglect proceeding. — In a neglect proceeding the government must prove its case by a preponderance of the evidence, not by clear and convincing evidence. *In re B.K.*, App. D.C., 429 A.2d 1331 (1981).

Government motion to dismiss for insufficient evidence. — Where the government moves to dismiss a neglect petition on the specific ground that it cannot adduce sufficient evidence to satisfy its burden of proof, and there is no showing that the motion is not made in good faith, the court has no alternative but to grant the motion. *In re D.B.*, 117 WLR 665 (Super. Ct. 1989).

Stay of dismissal. — Where the government failed to meet its burden of proof that any neglect was not due to the lack of financial needs, the order with respect to neglect was reversed, but in view of the intervening lapse of time since the children were taken into custody, the mandate of termination was stayed to permit the court to review the need for detention or shelter care, to allow time for the parties to effect the children's transition to the parents' home, or for the District to take such other action as the family's current circumstances and the children's best interest may have required. *In re T.G.*, App. D.C., 684 A.2d 786 (1996).

Responsibilities of trial judge in neglect proceeding where civil protection order has been entered. — This section places responsibility on the trial judge in a neglect proceeding to determine the best interests of the child, independent of findings in an intra-family proceeding in which a civil protection order was entered. *In re M.D.*, App. D.C., 602 A.2d 109 (1992).

Trial judge placed too much reliance on the

civil protection order which arose out of an intra-family proceeding which ended with an order designed to keep the mother and father apart, and was not designed to restrict the assessment of the trial judge in the neglect case of how visitation was to be achieved. *In re M.D.*, App. D.C., 602 A.2d 109 (1992).

Review of adjudication of delinquency. — In reviewing an adjudication of delinquency, the appellate court must view the evidence in the light most favorable to the government, making allowance for the fact-finder's right to determine credibility of witnesses and to draw the justifiable inferences from their testimony. *In re J.N.H.*, App. D.C., 293 A.2d 878 (1972).

Harm not cognizable by writ of habeas corpus. — Where an adjudication as a "child in need of supervision" is invalidated and where the commitment ordered as a result of that adjudication has elapsed, there is no present harm cognizable by a writ of habeas corpus. *Brown v. Yeldell*, 487 F.2d 1210 (D.C. Cir. 1973).

Factual findings by trial judge. — Where a predisposition report prepared in advance of completion of a psychiatric evaluation was inadequate because of the changed circumstances brought about by the completion of a psychiatric evaluation, which did not support earlier concerns about the father's mental health or alcoholism, the trial judge should have made some factual findings regarding the need for counseling, since that concern underlay his continued denial of visitation. *In re M.D.*, App. D.C., 602 A.2d 109 (1992).

While elaborate factual findings may not be required at a disposition hearing, terse and conclusory statements by the trial judge without reference to material evidence before him cannot suffice, particularly where there is a request for a specific finding on a father's right to visitation. *In re M.D.*, App. D.C., 602 A.2d 109 (1992).

Cited in *In re J.F.T.*, App. D.C., 320 A.2d 322 (1974); *In re C.L.W.*, App. D.C., 467 A.2d 706 (1983); *In re M.R.*, App. D.C., 525 A.2d 614 (1987); *In re D.C.*, App. D.C., 561 A.2d 477 (1989); *In re E.A.H.*, App. D.C., 612 A.2d 836 (1992); *K.F. v. P.M.*, App. D.C., 615 A.2d 594 (1992); *In re S.J.*, App. D.C., 632 A.2d 112 (1993).

§ 16-2318. Order of adjudication noncriminal.

A consent decree, order of adjudication, or order of disposition in a proceeding under this subchapter is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction, except the revocation of a motor vehicle operator's permit or privilege in accordance with the Motor Vehicle Operator's Permit Revocation Amendment Act of 1988, nor does it operate to disqualify a child in any future civil service examination, appoint-

ment or application for public service examination, or appointment or application for public service in either the Government of the United States or of the District of Columbia. (July 29, 1970, 84 Stat. 534, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2318; Mar. 16, 1989, D.C. Law 7-222, § 3, 36 DCR 570.)

Legislative history of Law 7-222. — Law 7-222, the “Motor Vehicle Operator’s Permit Revocation Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-489, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-297 and transmitted to both Houses of Congress for its review.

References in text. — The “Motor Vehicle Operator’s Permit Revocation Amendment Act of 1988” is D.C. Law 7-222 which is codified as §§ 16-2318 and 16-2331 and notes to § 40-302.1.

In general. — A child charged with act of delinquency is not involved in a criminal prosecution. In re M.W.F., App. D.C., 312 A.2d 302 (1973).

Criminal offenses under § 23-104. — The words “charged with a criminal offense,” as

used in § 23-104, which deals with an appeal of a suppression order entered before the trial of a person charged with a criminal offense, includes the term “delinquent act.” District of Columbia v. M.E.H., App. D.C., 312 A.2d 561 (1973).

Probation. — A minor respondent who was a child at the time on an alleged offense falls under the jurisdiction of the Family Division, unless formally transferred for criminal prosecution. Consequently, no criminal conviction can result from the Family Division’s disposition. Instead, a consent decree, order of adjudication, or order of disposition may be issued. Accordingly, the trial judge had no discretion to use the probation provisions in § 33-541(e). In re D.F.S., App. D.C., 684 A.2d 1281 (1996).

Cited in In re M.R., App. D.C., 525 A.2d 614 (1987); In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

§ 16-2319. Predisposition study and report.

(a) After a motion for transfer has been filed, or after the Division has made findings pursuant to subsection (c) of section 16-2317 sustaining the allegations of a petition and, in neglect cases, the conclusion that the child is neglected, the Division shall direct that a predisposition study and report to the Division be made by the Director of Social Services or a qualified agency designated by the Division concerning the child, his family, his environment, and other matters relevant to the need for treatment or disposition of the case. Except in connection with a hearing on a transfer motion, no predisposition study or report shall be furnished to or considered by the Division prior to completion of the factfinding hearing.

(b) The social investigation and plan for the family prepared pursuant to section 109 of the Prevention of Child Abuse and Neglect Act of 1977 shall satisfy the requirements of subsection (a) of this section. Such investigation and plan shall be made available to all counsel in the proceedings at least five (5) days prior to the date of trial; provided, however, that the investigation and plan shall not be furnished to or considered by the court prior to the completion of the fact-finding hearing.

(c)(1) The report to the Division in neglect cases shall include, but not be limited to, the following information:

(A) the specific harms intervention is designed to alleviate;

(B) the plans for alleviating these harms including specific services, the proposed providers of the services recommended and the actions the parent,

guardian, or custodian should take to alleviate these harms, including but not limited to parenting classes and family counseling if the Division orders either service.

(C) the estimated time in which the goals of intervention may be achieved or in which it will be known that the goals may not be achieved; and

(D) the criteria to be used to determine that intervention is no longer necessary; and,

(2) If the removal of the child from his parent, guardian, or custodian is recommended, the report shall also include:

(A) the recommended type of placement;

(B) the reasons why the child cannot be protected in his or her home;

(C) the likely harm the child will suffer as a result of the separation from his or her parent, guardian, or custodian and recommended steps to be taken to minimize this harm; and

(D) the plans for maintaining contact between the parent and child through visitation rights in order to maximize the parent-child relationship consistent with the well-being of the child. (July 29, 1970, 84 Stat. 535, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2319; Sept. 23, 1977, D.C. Law 2-22, title I, § 110(f), title IV, § 406, 24 DCR 3341; Mar. 16, 1995, D.C. Law 10-227, § 3(c), 42 DCR 4.)

Section references. — This section is referred to in §§ 16-2317 and 16-2320.

Effect of amendments. — D.C. Law 10-227 added “including but not limited to parenting classes and family counseling if the Division orders either service” at the end of (c)(1)(B).

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 10-227. — See note to § 16-2301.

References in text. — Section 109 of the Prevention of Child Abuse and Neglect Act of 1977, referred to in the first sentence in subsection (b) of this section, is § 109 of the Act of September 23, 1977, D.C. Law 2-22 codified as §§ 2-1351 et seq., 6-2101 et seq., and 16-2301 et seq.

Definitions applicable. — See note to § 16-2301.

Notice of hearing. — There is no reason to expect that notice of the filing of the social worker’s report alone would be sufficient to alert counsel and his client that a hearing would be held to determine child support at the dispositional hearing. In re X.B., App. D.C., 637 A.2d 1144 (1994).

Presumption that contact with both parents is normally in best interests of child. — The statutory scheme presumes that contact with both parents is normally in the best inter-

ests of the child, so while the right of visitation is not absolute, the trial judge must find reasons supported by record evidence that visitation would be detrimental to the child. In re M.D., App. D.C., 602 A.2d 109 (1992).

Consideration of report required. — Because of the specific requirement in this section that the Family Division order a predisposition report containing specific information, the Division is required to consider the results of the report and failure to do so would constitute an abuse of discretion. In re C.W.M., App. D.C., 407 A.2d 617 (1979).

The report required to be considered pursuant to subsection (a) is that of the Director of Social Services, and not that of the Department of Human Services. In re M.C.S., App. D.C., 555 A.2d 463 (1989).

Cited in In re J.J., App. D.C., 431 A.2d 587 (1981); In re C.L.W., App. D.C., 467 A.2d 706 (1983); In re M.R., App. D.C., 525 A.2d 614 (1987); In re D.W.G., 115 WLR 2097 (Super. Ct. 1987); In re L.J., App. D.C., 546 A.2d 429 (1988); In re R.B., 118 WLR 2405 (Super. Ct. 1990); LaShawn A. v. Dixon, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994); Johnson v. United States, App. D.C., 597 A.2d 917 (1991).

§ 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.

(a) If a child is found to be neglected, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process and may order any of the following dispositions which will be in the best interest of the child:

(1) Permit the child to remain with his or her parent, guardian, or other custodian, subject to such conditions and limitations as the Division may prescribe, including, but not limited to, the following services for the child and his or her parent, guardian, or other custodian:

(A) medical, psychiatric, or other treatment at an appropriate facility under protective supervision;

(B) parenting classes; and

(C) family counseling.

(2) Place the child under protective supervision.

(3) Transfer legal custody to any of the following —

(A) a public agency responsible for the care of neglected children;

(B) a child placing agency or other private organization or facility which is licensed or otherwise authorized by law and is designated by the Mayor of the District of Columbia to receive and provide care for the child; or

(C) a relative or other individual who is found by the Division to be qualified to receive and care for the child except that no child shall be ordered placed outside his or her home unless the Division finds the child cannot be protected in the home and there is an available placement likely to be less damaging to the child than the child's own home.

It shall be presumed that it is generally preferable to leave a child in his or her own home.

(4) Commitment of the child for medical, psychiatric, or other treatment at an appropriate facility on an in-patient basis if, at the dispositional hearing provided for in section 16-2317, the Division finds that confinement is necessary to the treatment of the child. A child for whom medical, psychiatric, or other treatment is ordered may petition the Division for review of the order thirty days after treatment under the order has commenced, and, if, after a hearing for the purpose of such review, the original order is affirmed, the child may petition for review thereafter every six months.

(5) The Division may make such other disposition as is not prohibited by law and as the Division deems to be in the best interests of the child. The Division shall have the authority to (i) order any public agency of the District of Columbia to provide any service the Division determines is needed and which is within such agency's legal authority and (ii) order any private agency receiving public funds for services to families or children to provide any such services when the Division deems it is in the best interests of the child and within the scope of the legal obligations of the agency.

(6) Terminate the parent and child relationship for the purpose of seeking an adoptive placement for the child pursuant to subchapter III of this chapter.

(b) Unless a child found neglected is also found to be delinquent, he shall not be committed to, or confined in, an institution for delinquent children.

(c) If a child is found to be delinquent or in need of supervision, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process and may order any of the following dispositions which will be in the best interest of the child:

(1) Any disposition authorized by subsection (a) of this section (other than paragraphs (3)(A) and (5) thereof).

(2) Transfer of legal custody to a public agency for the care of delinquent children.

(3) Probation under such conditions and limitations as the Division may prescribe, including but not limited to the completion of parenting classes or family counseling in cases where either or both was ordered by the Division.

(c-1) The Division shall order any child between the ages of 14 and 18 years who is found to be delinquent or in need of supervision to perform a minimum of 90 hours of community service with an agency of the District government or a non-profit or community service organization in accordance with section 24-804(a).

(d) No child found in need of supervision, unless also found delinquent, shall be committed to or placed in an institution or facility for delinquent children; except that if such child has previously been found in need of supervision and the Division, after hearing, so finds, the Division may specify that such child be committed to or placed in an institution or facility for delinquent children.

(e) No child who is found to be delinquent, in need of supervision, or neglected shall be committed to a penal or correctional institution for adult offenders.

(f) In its dispositional order for a child adjudicated neglected the Division shall address the matters set forth in section 16-2319(c) by accepting, modifying, or rejecting the plan submitted pursuant thereto. If the plan is rejected or major modifications are made, the agency charged with service responsibility shall within thirty (30) days submit to the Division and to all parties a plan which addresses the matters delineated in section 16-2319(b). The agency responsible for providing the services shall promptly report to the Division and all parties if it is unable for whatever reasons to provide the services delineated in the plan.

(g) The department or agency to whom the legal custody of a child has been transferred pursuant to subsection (a) of this section shall give notice, which may be oral, of any change in the placement of the child to the child's parent, the child's guardian ad litem and the child's foster parent at least ten (10) days prior to the change in placement, except that in the case of an emergency notice shall be given no later than twenty-four (24) hours (excluding Saturdays, Sundays and legal holidays) after the change. Notice of a change in placement need not be given to the parent when the judge has determined that visitation would be detrimental to the child or the judge has determined that the parent should not be apprised of the child's location. Upon the request of any person

entitled to notice under this subsection the department or agency having legal custody of the child shall afford an opportunity for an administrative hearing to review the proposed change in the placement of the child. Except in the case of an emergency, the hearing shall be held and a decision rendered prior to a change in the placement.

(h) Any child who is found to be delinquent for violation of the provisions of the District of Columbia Uniform Controlled Substances Act of 1981 may, in addition to any other disposition ordered by the court for his supervision, care, and rehabilitation, be ordered to attend classes conducted by the Mayor pursuant to section 33-554(c). (July 29, 1970, 84 Stat. 535, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2320; Sept. 23, 1977, D.C. Law 2-22, title IV, § 407, 24 DCR 3341; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(3), 28 DCR 3081; Apr. 30, 1988, D.C. Law 7-104, § 4(p), 35 DCR 147; May 10, 1989, D.C. Law 7-231, § 26, 36 DCR 492; Jan. 31, 1990, D.C. Law 8-61, § 3, 36 DCR 5798; May 15, 1993, D.C. Law 9-272, § 102, 40 DCR 7967; Mar. 16, 1995, D.C. Law 10-227, § 3(c), 42 DCR 4; Apr. 9 1997, D.C. Law 11-255, § 18(g), 44 DCR 1271.)

Section references. — This section is referred to in §§ 6-2125, 16-2323, 16-2327, and 32-1044.

Effect of amendments. — D.C. Law 10-227, in (a), rewrote the introductory language and (1); and, in (c), rewrote the introductory language and added “including but not limited to the completion of parenting classes or family counseling in cases where either or both was ordered by the Division” at the end of (3).

D.C. Law 11-255 inserted “of this section” in (c)(1); and substituted “section” for “§” in (c-1).

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 4-29. — Law 4-29, the “District of Columbia Uniform Controlled Substances Act of 1981,” was introduced in Council and assigned Bill No. 4-123, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — See note to § 16-2316.

Legislative history of Law 7-231. — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-61. — Law 8-61, the “Youth Offender Community Service Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-138, which was

referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-84 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-272. — See note to § 16-2307.

Legislative history of Law 10-227. — See note to § 16-2301.

Legislative history of Law 11-255. — See note to § 16-2309.

References in text. — The “District of Columbia Uniform Controlled Substances Act of 1981,” referred to in subsection (h), is D.C. Law 4-29. Section 505 of the Act is codified at § 33-555; however, the reference to § 505(c) of the Act in subsection (h) should probably be to § 504(c) of the Act which is codified at § 33-554(c).

Definitions applicable. — See note to § 16-2301.

D.C. Law Review. — For article, “Combating unnecessary family separation: How to seek court-ordered housing for families in the District of Columbia neglect system,” see 2 D.C. L. Rev. 25 (1993).

Protections of due process extend to disposition proceedings. — Temporary placement of a neglected child can substantially interfere with a natural parent’s right to develop a relationship with that child; therefore, there are important reasons why the procedural protection of the due process clause should extend to disposition proceedings involving the placement of a neglected child pursuant to this section. *K.F. v. P.M.*, App. D.C., 615 A.2d 594 (1992).

Failure to file timely petition. — Juvenile was not deprived of rehabilitative treatment

consistent with his individual needs during his commitment as a result of the government's failure to file a petition sooner. In re D.H., App. D.C., 666 A.2d 462 (1995).

Notice of hearing. — There is no reason to expect that notice of the filing of the social worker's report alone would be sufficient to alert counsel and his client that a hearing would be held to determine child support at the dispositional hearing. In re X.B., App. D.C., 637 A.2d 1144 (1994).

Nature of neglect proceedings. — Neglect proceedings are remedial and focus on the child; they are critically different from criminal prosecutions, which are primarily concerned with the allegedly abusive parent. Nevertheless, in the area of joinder and severance, precedents in criminal cases provide some guidance. In re S.G., App. D.C., 581 A.2d 771 (1990).

Findings of neglect. — Section does not require that a finding of neglect be entered against a natural parent, as opposed to a step-parent, guardian, or other custodian, before a disposition can be entered. In re S.G., 116 WLR 1149 (Super. Ct. 1988).

Order pursuant to subsection (a)(2) does not terminate parental rights. — An order pursuant to subsection (a)(2) does not terminate parental rights but merely determines custody of the neglected child for a period of 2 years, at which time further proceedings must be held. In re B.K., App. D.C., 429 A.2d 1331 (1981).

Order for agency services allowed only pursuant to transfer of "legal custody." — This section allows the Family Division to order services from an agency only pursuant to a transfer of "legal custody" to the agency. In re J.J., App. D.C., 431 A.2d 587 (1981).

Physical custody. — Order conditionally releasing child to the mothers', physical custody, while others retained legal custody, did not exceed judge's authority. In re S.C.M., App. D.C., 653 A.2d 398 (1995).

Medical treatment. — An infant child, with life-threatening heart condition, whose parents refuse to allow corrective surgery, may be adjudicated a neglected child under paragraph (9)(B) of § 16-2301 and committed for medical treatment under subsection (a) of this section. In re Adam L., 111 WLR 25 (Super. Ct. 1983).

Minor adjudged "dependent" continues under custody jurisdiction of court. — Where a minor has been adjudged a "dependent child," court has the authority under its continuing jurisdiction over the child to hear and determine the question of whether the custody of the child should be given to the natural mother or to the foster parents. In re N.M.S., App. D.C., 347 A.2d 924 (1975).

Best interests of child. — The best interests of the child is the standard in neglect cases. In re L.J.T., App. D.C., 608 A.2d 1213 (1992).

The best interest of the child standard applies where the government seeks to terminate the commitment of a neglected child because it concludes that the child cannot make effective use of the services provided in the juvenile system. In re T.R.J., App. D.C., 661 A.2d 1086 (1995).

The best interest of the child is the controlling factor in the custody decision. In re N.M.S., App. D.C., 347 A.2d 924 (1975).

Preadoption termination of parental rights. — The preadoption termination of parental rights should be obtained through statutory procedure which is a part of an adoption proceeding. White v. N.E.M., App. D.C., 358 A.2d 328 (1976).

Parent mentally ill. — Even where a parent suffers from mental illness, it does not necessarily follow that the parent's right of visitation can be denied outright. In re M.D., App. D.C., 602 A.2d 109 (1992).

Placement outside noncustodial parent's home. — Where child's father was not a custodial parent, placement of child at some home other than his does not implicate subsection (a)(3)(C) of this section. In re S.G., 116 WLR 1149 (Super. Ct. 1988).

The presumptive preference for a parent to have custody over a nonparent was effectively rebutted by clear and convincing evidence that it would be in the neglected child's best interest, and in conformity with her wishes to live with her grandmother and other siblings in her hometown rather than with her noncustodial father in a new town. In re S.G., App. D.C., 581 A.2d 771 (1990).

Payment for services for juvenile offender on probation not authorized. — The Family Division of the Superior Court has no authority to order a District of Columbia agency to pay for services for a juvenile offender on probation. In re J.J., App. D.C., 431 A.2d 587 (1981).

Order to provide suitable housing. — Under subsection (a)(5) the Family Division of the Superior Court is authorized to order the District, through its executive agencies, to provide suitable housing or, in the alternative, financial resources sufficient to secure suitable private housing to reunite parents with children who reside in a foster home because of a prior neglect proceeding. In re D.I., 113 WLR 1293 (Super. Ct. 1985).

The trial court does not have the power pursuant to subsection (a)(5) to order the former Department of Public and Assisted Housing to provide immediate public housing to the families of neglected children. In re G.G., App. D.C., 667 A.2d 1331 (1995).

Adjudication of delinquency single unitary judgment. — When a juvenile is found guilty of two or more criminal offenses, the court does not "sentence" that juvenile sepa-

rately on each count as it would sentence an adult; rather, an adjudication of delinquency is a single unitary judgment. In re T.H.B., App. D.C., 670 A.2d 895 (1996).

Placement at facility for delinquent children. — This section must be read to require a second "child in need of supervision" (CINS) adjudication before a child previously adjudicated a CINS can be placed at a facility for delinquent children. In re W.L., App. D.C., 603 A.2d 839 (1991).

Rights of delinquent child committed to in-patient treatment facility. — Delinquent children committed to in-patient psychiatric facilities are entitled to protections similar to those afforded civilly committed adults who seek periodic judicial review of their hospitalization under D.C. Code § 21-501 et seq. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Required findings. — The finding requirement of subsection (a)(4) could be satisfied not only by a written finding but also by an express oral finding made on the record at the time of the dispositional hearing. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

When the Superior Court has acquired jurisdiction of a neglected child and committed that child for care to the public agency responsible for the care of neglected children and is requested to terminate the child's commitment prior to his or her twenty-first birthday, it must first find that commitment is no longer necessary to safeguard the child's welfare and should frame that finding in conformity with the statute in terms of the child's best interest. In re T.R.J., App. D.C., 661 A.2d 1086 (1995).

Determination must be based on legally-admissible evidence. — In determining whether a child is a "child in need of supervision," the court may rely only on evidence that is legally admissible. In re D.M.C., App. D.C., 503 A.2d 1280 (1986).

Evidence of juvenile's school attendance record. — Admitting into evidence, and basing a finding of truancy upon, a document which purportedly set forth a juvenile's school attendance record during the first few months of the 1983-1984 school year was reversible error, where the District failed to lay an adequate foundation to justify the admission of the information within an exception to the hearsay rule. In re D.M.C., App. D.C., 503 A.2d 1280 (1986).

Strict segregation of child in need of assistance from other adjudicated delinquents. — If a trial judge imposes the requirement of strict segregation of a child in need of supervision from any adjudicated delinquents, it is not the court's order, but the District's implementation of it, which may be subject to challenge, and civil contempt is the appropriate means to compel compliance by the District. In re W.L., App. D.C., 603 A.2d 839 (1991).

Public safety. — In making a decision respecting detention, the disposition judge may consider the safety of the community as well as the juvenile's needs, and the informed exercise of discretion in that regard will rarely be disturbed on appeal. In re L.J., App. D.C., 546 A.2d 429 (1988).

Where a youngster sprayed a vehicle occupied by fellow human beings with automatic weapons fire while he was both on probation in a drug case and on pretrial release in connection with another armed offense, it defied reason and common sense to say that the disposition judge may not consider, in a very serious way, the implications for public safety of a decision to release the respondent to the community only a few months after his commitment. In re L.J., App. D.C., 546 A.2d 429 (1988).

Dismissal by Division. — Family Division has the authority to dismiss a delinquency petition at a dispositional hearing if the Court finds that a child who committed a delinquent act is, nonetheless, not in need of care and rehabilitation, and thus is not a delinquent child. In re C.S. MCP, App. D.C., 514 A.2d 446 (1986).

Court's authority following commitment. — The court is without statutory power to intervene after a commitment, even though it is specifically granted the authority to modify or revoke a dispositional order placing a juvenile on probation. In re J.M.W., App. D.C., 411 A.2d 345 (1980); In re J.A.G. District of Columbia Dep't of Human Servs., App. D.C., 443 A.2d 13 (1982).

Time limits for appeal. — An appeal from order terminating parental rights has to be taken within 30 days. In re C.I.T., App. D.C., 369 A.2d 171 (1977).

Review of dispositions. — The rule generally precluding review of lawful sentences applies to dispositions in juvenile delinquency cases. In re L.J., App. D.C., 546 A.2d 429 (1988).

Discretion of court. — Trial judge did not abuse his discretion in not lifting a court-imposed restriction on his release from the Children's Center after he had been confined there for about half a year where the disposition judge could reasonably conclude that the judicial system could significantly contribute to the rehabilitation of a delinquent by teaching him that conduct does have consequences and that, so far as the judge can make them so, the results of antisocial behavior are predictable. In re L.J., App. D.C., 546 A.2d 429 (1988).

Trial court did not abuse its discretion in revoking protective supervision and returning child to the care of a foster home. In re A.M., App. D.C., 589 A.2d 1252 (1991).

Authority to review an order under subsection (a)(4). — The authority to review an order under subsection (a)(4) includes power to affirm, and thus implicitly to set aside, disposi-

tion order providing for confinement at an inpatient treatment facility. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Authority to order District to place a family in adequate housing. — Although this section provides the court with the authority to order the District of Columbia to place a family in adequate housing, such authority should be exercised sparingly, only in cases where it is clear that immediate reunification of the family is in the best interests of the child, and where the parent has unequivocally and consistently, over time, demonstrated an entitlement to this extreme remedy. In re T.B., 120 WLR 1089 (Super. Ct. 1992).

Preferential treatment and access to public housing. — Petition seeking to obtain preferential treatment and access to public housing, in that the provision of such housing would expedite reunification of the family as a family unit was not the jurisdictional authority of the Court under subdivision (a)(5). In re O.P., 151 WLR 1557 (Super. Ct. 1995).

Court may issue alternative commitment order when Department of Human Services fails to comply with original order. — In light of the overriding goal of the District's Juvenile Act, to promote the care and rehabilitation of the juvenile, the court must be empowered to act and/or issue an alternative commitment order when the Department of Human Services fails to comply with the original order of the division. In re A.A.I., App. D.C., 483 A.2d 1205 (1984).

Court relinquishes authority following implementation of disposition order. — Only when the disposition order is issued and is implemented by the Department of Human Services does the division relinquish its authority to make a new disposition and the Department assumes exclusive supervisory responsibility over the juvenile. In re A.A.I., App. D.C., 483 A.2d 1205 (1984).

Juvenile Form 5. — Juvenile Form 5 is the type of order which a commitment under subsection (a)(4) would generate. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Juvenile Form 7. — Juvenile Form 7 is a "combination" disposition order for commitment under subsections (a)(5) and (c)(2) of this section. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Cited in In re H.M., App. D.C., 386 A.2d 707 (1978); In re C.W.M., App. D.C., 407 A.2d 617 (1979); Teasley v. United States, 662 F.2d 787 (D.C. Cir. 1980); Butler v. Metropolitan Life Ins. Co., 500 F. Supp. 661 (D.D.C. 1980), but see, Mobley v. Metropolitan Life Ins. Co., 907 F. Supp. 495 (D.D.C. 1995); In re C.L.W., App. D.C., 467 A.2d 706 (1983); In re M.M.M., App. D.C., 485 A.2d 180 (1984); In re J.C.M., App. D.C., 502 A.2d 472 (1985); In re D.M.C., App. D.C., 503 A.2d 1280 (1986); In re M.R., App. D.C., 525 A.2d 614 (1987); In re U.S.W., App. D.C., 541 A.2d 625 (1988); In re D.R., App. D.C., 541 A.2d 1260 (1988); In re O.A., App. D.C., 548 A.2d 499 (1988); Christopher B. v. Barry, 715 F. Supp. 1143 (D.D.C. 1989); In re M.C.S., App. D.C., 555 A.2d 463 (1989); In re A.W., App. D.C., 569 A.2d 168 (1990); In re D.R.M., App. D.C., 570 A.2d 796 (1990); District of Columbia v. Jerry M., App. D.C., 571 A.2d 178 (1990); In re H.R., App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994); In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990); In re R.B., 118 WLR 2405 (Super. Ct. 1990); Johnson v. United States, App. D.C., 597 A.2d 917 (1991); In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991); In re J.A., App. D.C., 601 A.2d 69 (1991); In re T.W., App. D.C., 623 A.2d 116 (1993); In re Myrick, App. D.C., 624 A.2d 1222 (1993); In re I.B., App. D.C., 631 A.2d 1225 (1993); In re L.H., App. D.C., 634 A.2d 1230 (1993); Doe ex rel. Fein v. District of Columbia, 93 F.3d 861 (D.C. Cir. 1996); In re S.L.E., App. D.C., 677 A.2d 514 (1996).

§ 16-2321. Disposition of mentally ill or substantially retarded child.

(a) If no previous examination has been made under section 16-2315 and the Division, after a factfinding but before a dispositional hearing, has reason to believe that a child is mentally ill or substantially retarded, it may order an examination as provided in section 16-2315.

(b) If as a result of the examination the child is found to be mentally ill or substantially retarded, the Division may, in lieu of other disposition, direct the appropriate authority to initiate commitment proceedings under chapter 5 or 11 of title 21. The Division may order the child detained in suitable facilities pending commitment proceedings.

(c) If the examination does not indicate that commitment proceedings should be initiated or if the proceedings do not result in commitment, the

Division shall proceed to disposition pursuant to this subchapter. (July 29, 1970, 84 Stat. 536, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2321.)

Cited in *In re C.W.M.*, App. D.C., 407 A.2d 617 (1979).

§ 16-2322. Limitation of time on dispositional orders.

(a)(1) A dispositional order vesting legal custody of a neglected child in a department, agency, or institution shall remain in force for an indeterminate period not exceeding two years. Unless the order specifies that release is permitted only by order of the Division, the department, agency, or institution may release the child at any time that it appears the purpose of the disposition order has been achieved.

(2) An order vesting legal custody of a child in an individual other than his parent shall remain in force for two years unless sooner terminated by order of the Division.

(3) An order of probation or a protective supervision order shall remain in force for a period not exceeding one year from the date entered, but the Director of Social Services or the agency providing supervision may terminate supervision at any time that it appears the purpose of the order has been achieved.

(4) Subject to subsection (f) of this section, a dispositional order vesting legal custody of a child adjudicated delinquent or in need of supervision in a department, agency, or institution shall remain in force for an indeterminate period not to exceed the youth's twenty-first birthday. Unless the order sets a minimum period for commitment of the child, or specifies that release is permitted only by order of the Division, the department, agency, or institution may release the child at any time that it appears the purpose of the disposition order has been achieved.

(b) A dispositional order vesting legal custody of a neglected child in an agency or institution may be extended for additional periods of one year upon motion of the department, agency, or institution to which the child was committed, if, after notice and hearing, the Division finds that the extension is necessary to safeguard the welfare of the child.

(c) Any other dispositional order may be extended for additional periods of one year, upon motion of the Director of Social Services, if, after notice and hearing, the Division finds that extension is necessary to protect the interest of the child.

(d) A release or termination of an order prior to expiration of the order pursuant to subsection (a)(1) or (3), shall promptly be reported in writing to the Division.

(e) Upon termination of a dispositional order a child shall be notified in writing of its termination. Upon termination of an order or release a child shall be notified, in accordance with rules of the Superior Court, of his right to move for the sealing of his records as provided in section 16-2335.

(f) Unless sooner terminated, all orders of the Division under this subchapter in force with respect to a child terminate when he reaches twenty-one years

of age. (July 29, 1970, 84 Stat. 537, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2322; May 15, 1993, D.C. Law 9-272, § 103, 40 DCR 796.)

Legislative history of Law 9-272. — See note to § 16-2307.

Jurisdiction. — The trial court retained jurisdiction to determine who should have custody of children who remained in the custody of the Department of Human Services. In re O.A., App. D.C., 548 A.2d 499 (1988).

A parent's objection to an order extending a child's commitment to the Department of Human Services does not extinguish the court's jurisdiction to consider what is best for that child's welfare. In re A.H., App. D.C., 590 A.2d 123 (1991).

Applicability. — Nothing in §§ 16-2351 to 16-2365 modifies the prior law that in child neglect proceedings dispositional orders concerning termination of parental visitation rights, as such, are subject to the time limitations in this section, because enactment of the procedure in §§ 16-2351 to 16-2365 for permanently terminating all parental rights in order to facilitate adoption does not imply authority of the court to order permanent termination of fewer than all parental rights, such as the right to visitation. In re H.M., App. D.C., 386 A.2d 707 (1978).

Any order ancillary to an award of temporary custody under subsection (a)(2) or (c) of this section, such as an order limiting a parent's visitation rights, is subject to the same time limitations found in those subsections. In re H.M., App. D.C., 386 A.2d 707 (1978).

Contraction. — Section 16-2305(f) and subsection (b) of this section must be construed together. In re T.L.J., App. D.C., 413 A.2d 154 (1980).

Authority of court following commitment. — The court is without statutory power to intervene after a commitment, even though it is specifically granted the authority to modify or revoke a dispositional order placing a juvenile on probation. In re J.M.W., App. D.C., 411 A.2d 345 (1980).

Authority of Social Rehabilitation Administrative. — Social Rehabilitation Administration has exclusive supervisory responsibility over juvenile committed to its custody and has the sole authority to determine the appropriateness of the aftercare program. In re J.M.W., App. D.C., 411 A.2d 345 (1980).

Rate of standing. — Corporation Counsel has standing to make a motion pursuant to subsection (b) of this section. In re T.L.J., App. D.C., 413 A.2d 154 (1980).

Termination of commitment. — The best interest of the child standard applies where the government seeks to terminate the commitment of a neglected child because it concludes that the child cannot make effective use of the

services provided in the juvenile system. In re T.R.J., App. D.C., 661 A.2d 1086 (1995).

When the Superior Court has acquired jurisdiction of a neglected child and committed that child for care to the public agency responsible for the care of neglected children and is requested to terminate the child's commitment prior to his or her twenty-first birthday, it must first find that commitment is no longer necessary to safeguard the child's welfare and should frame that finding in conformity with the statute in terms of the child's best interest. In re T.R.J., App. D.C., 661 A.2d 1086 (1995).

Time for filing motion for extension of commitment. — This section specifies no particular time within which the government's motion for extension of the commitment must be filed. Thus, a motion is not necessarily time-barred merely because it is filed after expiration of the existing order. In re O.A., App. D.C., 548 A.2d 499 (1988).

Parent's objection to extension of child's commitment to the Department of Human Services. — When a parent objects to a government motion to continue a child's custody in the Department of Human Services after a commitment order has expired, whether acting on government motion or sua sponte, the court must permit the parent's objection to be fully aired at the subsection (b) hearing and weighed as part of the court's ruling on whether extending the status quo is necessary to safeguard the child's welfare. In re A.H., App. D.C., 590 A.2d 123 (1991).

Findings necessary to grant extension of custody. — Once a motion is properly before the court, notwithstanding the recommendation of the custodial institution, the court may grant an extension under subsection (b) of this section only if it finds it necessary: (1) For the rehabilitation of the juvenile; or (2) for the protection of the public interest. In re T.L.J., App. D.C., 413 A.2d 154 (1980).

Nunc pro tunc orders. — The expiration of a trial court order committing neglected children to the care and custody of the Department of Human Services (D.H.S.) did not necessarily prevent the court thereafter from exercising jurisdiction to continue the children's commitment nunc pro tunc to the date of expiration of the commitment order where the children remained in the custody of D.H.S. and the order merely maintained this status quo and, thus, if error, was harmless. In re O.A., App. D.C., 548 A.2d 499 (1988).

Review of dispositions. — The rule generally precluding review of lawful sentences applies to dispositions in juvenile delinquency cases. In re L.J., App. D.C., 546 A.2d 429 (1988).

Cited in *In re J.A.G. District of Columbia Dep't of Human Servs.*, App. D.C., 443 A.2d 13 (1982); *In re J.C.M.*, App. D.C., 502 A.2d 472 (1985); *In re D.W.G.*, 115 WLR 2097 (Super. Ct. 1987); *N.H. v. District of Columbia*, App. D.C.,

569 A.2d 1179 (1990); *Johnson v. United States*, App. D.C., 597 A.2d 917 (1991); *In re W.L.*, App. D.C., 603 A.2d 839 (1991); *K.F. v. P.M.*, App. D.C., 615 A.2d 594 (1992); *In re T.R.J.*, App. D.C., 661 A.2d 1086 (1995).

§ 16-2323. Review of dispositional orders.

(a) When a child has been adjudicated neglected and a dispositional order has been entered by the Division, the Division shall hold a review hearing.

(1) at least every six (6) months for a child under the age of six (6) years who is committed to the custody of an agency, department, or institution;

(2) at least every six (6) months for a child of any age who is committed to the custody of an agency, department, or institution but has not been committed for longer than two (2) years;

(3) at least every year for all other children.

(b) At least ten (10) days prior to each review hearing the Division or the department, agency, or institution responsible for the supervision of the services to the child and his parent, guardian, or custodian shall submit a report to the Division which shall include, but not be limited to, the following information:

(1) the services provided or offered to the child and his parent, guardian or other custodian;

(2) any evidence of the amelioration of the condition which resulted in the finding of neglect and any evidence of new problems which would adversely affect the child;

(3) an evaluation of the cooperation of the parent, guardian or custodian with the Division or the applicable department, agency, or institution;

(4) in those cases in which the custody of the child has been vested in a department, agency, institution or person other than the parent —

(A) the extent to which visitation has occurred and any reasons why visitation has not occurred or has been infrequent,

(B) the estimated time in which the child can be returned to the home, and

(C) whether the agency has initiated or intends to initiate the filing by the Corporation Counsel of a motion requesting the termination of the parent and child relationship and any reasons why it does not intend to initiate the filing of such a motion; and

(5) such other information as may be required by rules of the Superior Court of the District of Columbia.

(c) A notice of a review hearing under this section shall be given to all parties and their attorneys of record as prescribed by rules of the Superior Court of the District of Columbia.

(d) If the Division finds that the commitment of the child to a department, agency, institution or person other than the parent is no longer necessary to safeguard the welfare of the child, the Division may order:

(1) the child returned to the home and the provision of supervision or other services; or

(2) any other disposition authorized by section 16-2320(a). (1973 Ed., § 16-2323; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(b), 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Definitions applicable. — See note to § 16-2301.

D.C. Law Review. — For article, "Combating unnecessary family separation: How to seek court-ordered housing for families in the District of Columbia neglect system," see 2 D.C. L. Rev. 25 (1993).

Review of lawful sentences. — The rule generally precluding review of lawful sentences applies to dispositions in juvenile delinquency cases. In re L.J., App. D.C., 546 A.2d 429 (1988).

Court-imposed restrictions on release. — Trial judge did not abuse his discretion in not lifting a court-imposed restriction on his release from the Children's Center after he had been confined there for about half a year and the disposition judge could reasonably conclude that the judicial system could significantly contribute to the rehabilitation of a delinquent by teaching him that conduct does have consequences and that, so far as the judge could make them so, the results of antisocial behavior were predictable. In re L.J., App. D.C., 546 A.2d 429 (1988).

Legal or physical custody. — Order conditionally releasing child to the mother, while others retained legal custody, did not exceed judge's authority. In re S.C.M., App. D.C., 653 A.2d 398 (1995).

Best interests of child in termination of commitment. — The best interest of the child standard applies where the government seeks to terminate the commitment of a neglected child because it concludes that the child cannot make effective use of the services provided in the juvenile system. In re T.R.J., App. D.C., 661 A.2d 1086 (1995).

When the Superior Court has acquired jurisdiction of a neglected child and committed that child for care to the public agency responsible for the care of neglected children and is requested to terminate the child's commitment prior to his or her twenty-first birthday, it must first find that commitment is no longer necessary to safeguard the child's welfare and should frame that finding in conformity with the statute in terms of the child's best interest. In re T.R.J., App. D.C., 661 A.2d 1086 (1995).

Cited in In re H.M., App. D.C., 386 A.2d 707 (1978); LaShawn A. v. Dixon, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994); In re A.M., App. D.C., 589 A.2d 1252 (1991); In re A.H., App. D.C., 590 A.2d 123 (1991); Johnson v. United States, App. D.C., 597 A.2d 917 (1991); K.F. v. P.M., App. D.C., 615 A.2d 594 (1992); In re T.B., 120 WLR 1089 (Super. Ct. 1992); In re X.B., App. D.C., 637 A.2d 1144 (1994).

§ 16-2324. Modification, termination of orders.

An order of the Division under this subchapter shall be set aside if —

- (1) it was obtained by fraud or mistake sufficient to set aside an order or judgment in a civil action;
- (2) the Division lacked jurisdiction; or
- (3) newly discovered evidence so requires. (July 29, 1970, 84 Stat. 537, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2324; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; May 15, 1993, D.C. Law 9-272, § 104, 40 DCR 796.)

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 9-272. — See note to § 16-2307.

Construction. — The language of this section is mandatory, thus, if the conditions of paragraph (1), (2) or (3) are shown to exist, the disposition order "shall be set aside." In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Effect of setting aside an order. — This section requires that the court return matters to the status quo ante by wiping out the disposition order altogether. What follows that action depends on the nature of the grounds which caused the order to be set aside. If, for example, the court acted under paragraph (2), because it lacked jurisdiction, no further pro-

ceedings would ensue. If the grounds for the set aside were paragraph (1) or (3), it may be necessary for the court to grant a new fact-finding hearing (if the motion challenged the manner in which the juvenile was found guilty of an offense) or to enter a new disposition order (if the motion related only to the arrangements decreed by the court in its initial disposition order). In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Role of Family Division. — Broad post-dispositional supervisory role of Family Division would be inconsistent with the current state of the law in this jurisdiction, thus, each motion seeking relief under this section must be carefully examined on its own merits to see if the circumstances there presented can be

properly comprehended by the explicit statutory grant of authority. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Newly discovered evidence. — If respondent shows that evidence was discovered after disposition which would have produced a different disposition if discovered before, the Family Division is not precluded — as the Civil Division would be — from granting relief under paragraph (3) because the child's counsel failed to exercise due diligence in discovering that evidence. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Motions under paragraph (3) are not required to meet the same civil sufficiency standards of paragraph (1). In paragraph (3), Congress meant to invoke a much broader discretion of the Family Division to consider, based on newly discovered evidence, what the interests of justice required in the particular case, bearing in mind that the dominant goal of juvenile proceedings is the care and rehabilitation of the respondent. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Where a Family Division judge learns, through newly discovered evidence, that a residential facility at which it ordered a juvenile placed, is grossly incompetent, abusive, and literally life-threatening to that respondent such that his continued placement there will not only lead to no rehabilitation but will likely delay his rehabilitation and may seriously and permanently injure him, the court has authority under paragraph (3) to set aside the disposition order. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Fraud or mistake. — If the placement originally ordered delivered exactly what the court contemplated when it entered the order, then it would not be enough under paragraph (1) that the court or counsel was mistaken in thinking

that there was no better placement option available. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Court-imposed restrictions on release. — Trial judge did not abuse his discretion in not lifting a court-imposed restriction on his release from the Children's Center after he had been confined there for about half a year and the disposition judge could reasonably conclude that the judicial system could significantly contribute to the rehabilitation of a delinquent by teaching him that conduct does have consequences and that, so far as the judge could make them so, the results of antisocial behavior were predictable. In re L.J., App. D.C., 546 A.2d 429 (1988).

Evidence. — The trial judge was authorized, after considering on a motion to remove restrictions from commitment, the recommendations of the Department of Human Services and the expert witness, to reject them if he found them unpersuasive. In re L.J., App. D.C., 546 A.2d 429 (1988).

Public safety. — Where a youngster sprayed a vehicle occupied by fellow human beings with automatic weapons fire while he was both on probation in a drug case and on pretrial release in connection with another armed offense, it defies reason and common sense to say that the disposition judge may not consider, in a very serious way, the implications for public safety of a decision to release the respondent to the community only a few months after his commitment. In re L.J., App. D.C., 546 A.2d 429 (1988).

Cited in In re J.A.G. District of Columbia Dep't of Human Servs., App. D.C., 443 A.2d 13 (1982); In re T.R.J., App. D.C., 661 A.2d 1086 (1995); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 16-2325. Support of committed child.

Whenever legal custody of a child is vested in any agency or individual other than the child's parent, after due notice to the parent or other persons legally obligated to care for and support the child and after hearing, the Division may, at the dispositional hearing or thereafter, order and decree that the parent or other legally obligated person shall pay, in such manner as the Division may direct, a reasonable sum that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person wilfully fails or refuses to pay such sum, the Division may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment. (July 29, 1970, 84 Stat. 537, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2325; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

§ 16-2325.1 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Legislative history of Law 2-22. — See note to § 16-2301.

Notice and hearing necessary. — The legislature deemed due notice to the parent, the affected party, and a hearing prior to imposition of an obligation thereunder to be essential. In re X.B., App. D.C., 637 A.2d 1144 (1994).

Notice of support award. — Delivery of a copy of the predisposition report in a neglect case by the assigned social worker to the folder

for appellant's attorney in the Center for Child Abuse and Neglect office did not constitute adequate notice that the court would include in its disposition order an award of child support. In re X.B., App. D.C., 637 A.2d 1144 (1994).

Cited in In re J.A.G. District of Columbia Dep't of Human Servs., App. D.C., 443 A.2d 13 (1982); In re R.B., 118 WLR 2405 (Super. Ct. 1990); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 16-2325.1. Participation order.

(a) In any proceedings under this chapter, the court may enter an order specifically requiring a parent or guardian to participate in the rehabilitation process of a juvenile, including, but not limited to, mandatory attendance at a juvenile proceeding, parenting class, counseling, treatment, or an education program.

(b) The court may, when the court determines that it is in the best interests of the child, issue an order applicable to a parent or guardian of a child and the person with whom the child resides, if other than the child's parent or guardian. The order shall require the parent or guardian and the person with whom the child resides, if other than the parent or guardian, to be present at any juvenile proceeding or court ordered program concerning the child.

(c) A person failing to comply with an order of participation without good cause may be found in civil contempt of court.

(d) The court shall issue a bench warrant for any parent or guardian or person with whom the child resides, if other than the parent or guardian, who, without good cause, fails to appear at any juvenile proceeding or court ordered program.

(e) For the purposes of this section, good cause for failing to appear shall include, but not be limited to, a situation where a parent, guardian, or person with whom the child resides:

(1) Has an employment obligation that would result in the loss of employment if not complied with;

(2) Does not have physical custody of the child and resides outside the District of Columbia; or

(3) Resides in the District of Columbia, but is outside the District of Columbia at the time of the juvenile proceeding or court ordered program for reasons other than avoiding participation or appearance before the court, and participating or appearing in court will result in undue hardship to such parent or guardian.

(f) It is the intent of this section that every parent or guardian whose child is the subject of a juvenile proceeding and any court ordered program under this chapter should attend any such proceeding or program as often as is practicable.

(g) Nothing in this section shall be construed to create a right for any juvenile to have his or her parent or guardian present at any juvenile proceeding or court ordered program at which such juvenile is present. (Apr. 9, 1997, D.C. Law 11-199, § 2(c), 43 DCR 4385.)

Legislative history of Law 11-199. — Law 11-199, the “Adjustment Process for Nonviolent Juvenile Offenders and Parent Participation in Court-Ordered Proceedings Act of 1996,” was introduced in Council and assigned Bill No. 11-622, which was referred to the Committee on the Judiciary. The Bill was adopted on first

and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-361 and transmitted to both Houses of Congress for its review. D.C. Law 11-199 became effective on April 9, 1997.

§ 16-2326. Court costs and expenses.

(a) If, at the dispositional hearing or thereafter, the Division finds, after due notice and a hearing, that the parent or other person legally obligated to care for and support a child subject to proceedings under this subchapter is financially able to pay, the Division may order him or her to pay all of or part of the costs of —

(1) physical and mental examinations and treatment of the child ordered by the Division;

(2) except in neglect cases, a reasonable compensation for the services and related expenses of counsel appointed by the Division to represent the child; and

(3) in neglect cases, a reasonable compensation for the services and related expenses of counsel appointed by the Division to represent the parent or person.

(b) Payment under this section shall be made as prescribed by rules of the Superior Court of the District of Columbia. (July 29, 1970, 84 Stat. 537, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2326; Sept. 23, 1977, D.C. Law 2-22, title IV, §§ 408(a), 409, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Definitions applicable. — See note to § 16-2301.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 16-2326.1. Compensation of attorneys in neglect and termination of parental rights proceedings.

(a)(1) Except as provided for by subsections (b) and (e), an attorney representing a person who is financially unable to obtain legal counsel in a neglect proceeding or appointed to serve as counsel or guardian ad litem for a child who is the subject of a neglect proceeding shall, at the end of the representation or at the end of a segment of the representation, be compensated at a rate not less than the hourly rates established in D.C. Code, sec. 11-2604.

(2) The attorney may make a claim for expenses reasonably incurred during the course of the representation.

(b) Compensation payable pursuant to this section shall be subject to the following limitations:

(1) for all proceedings from initial hearing through disposition, the maximum compensation shall be \$1,100;

(2) for all subsequent proceedings other than termination of parental rights, the maximum compensation shall be \$1,100 per year;

(3) for proceedings to terminate parental rights, the maximum compensation shall be \$1,500; and

(4) for appeal of trial court orders, the maximum compensation shall be \$750 per case.

(c)(1) A separate claim for compensation and reimbursement shall be made to the Superior Court of the District of Columbia for representation before that Court, and to the District of Columbia Court of Appeals for representation before the District of Columbia Court of Appeals.

(2) Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source.

(3) The Superior Court of the District of Columbia or the District of Columbia Court of Appeals shall fix the compensation and reimbursement to be paid to the attorney.

(4) In cases where representation is furnished other than before the Superior Court of the District of Columbia or the District of Columbia Court of Appeals, claims shall be submitted to the Superior Court of the District of Columbia which shall fix compensation and reimbursement to be paid.

(d) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(e) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, the person may do so without prepayment of fees, costs, or security and without filing the affidavit required by D.C. Code, sec. 11-2604.

(f)(1) Claims for compensation and reimbursement in excess of the maximum amount provided in subsection (b) may be approved for extended or complex representation when the payment is necessary to provide fair compensation. The request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court of the District of Columbia upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the District of Columbia Court of Appeals upon recommendation of the presiding judge in the case.

(2) A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

(g)(1) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request compensation for services in an ex parte application.

(2) Upon a finding, after appropriate inquiry in an ex parte proceeding, that investigative, expert, or other services are necessary but are not available through existing court resources, and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(3) Compensation to be paid to a person for services rendered under this subsection shall not exceed \$300, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of

an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case.

(4) In no event shall the total compensation recoverable for the services described in this section exceed \$750 or the rate provided by D.C. Code, sec. 11-2605(c).

(h) Compensation for attorneys appointed to represent parties in neglect proceedings and costs of investigative, expert, and other services shall be paid pursuant to procedures established by the Superior Court of the District of Columbia. (Mar. 13, 1985, D.C. Law 5-129, § 2(c), 31 DCR 5192; Feb. 24, 1987, D.C. Law 6-192, § 2, 33 DCR 7836; Aug. 6, 1993, D.C. Law 10-11, § 202, 40 DCR 4007; Sept. 30, 1993, D.C. Law 10-25, § 202, 40 DCR 5489.)

Cross references. — As to pay for representing indigent criminal defendants, see § 11-2604.

As to services other than counsel for indigents, see § 11-2605.

As to motions in proceedings regarding termination of parental rights of certain neglected children, see § 16-2354.

Legislative history of Law 5-129. — Law 5-129, the “Neglect Representation Equity Act of 1984,” was introduced in Council and assigned Bill No. 5-356, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 10, 1984, and September 12, 1984, respectively. Signed by the Mayor on October 1, 1984, it was assigned Act No. 5-182 and transmitted to both Houses of Congress for review.

Legislative history of Law 6-192. — Law 6-192, the “Technical Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the

Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-11. — D.C. Law 10-11, the “Omnibus Budget Support Temporary Act of 1993,” was introduced in Council and assigned Bill No. 10-259. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 15, 1993, it was assigned Act No. 10-39 and transmitted to both Houses of Congress for its review. D.C. Law 10-11 became effective on August 6, 1993.

Legislative history of Law 10-25. — D.C. Law 10-25, the “Omnibus Budget Support Act of 1993,” was introduced in Council and assigned Bill No. 10-165, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-57 and transmitted to both Houses of Congress for its review. D.C. Law 10-25 became effective on September 30, 1993.

§ 16-2327. Probation revocation; disposition.

(a) If a child on probation incident to an adjudication of delinquency or need of supervision violates any term of his probation he may be proceeded against in a probation revocation hearing.

(b) A proceeding to revoke probation shall be commenced by the filing of a revocation petition by the Corporation Counsel. The petition to revoke probation shall be in such form as may be prescribed by rule of the Superior Court and shall be served together with a summons in the manner provided in section 16-2306.

(c) Probation revocation proceedings shall be heard without a jury and shall require establishment of the facts alleged by a preponderance of the evidence. As nearly as may be appropriate, probation revocation proceedings shall conform to the procedures established by this subchapter for delinquency and need of supervision cases.

(d) If a child is found to have violated the terms of his probation, the Division may modify the terms and conditions of the probation order, extend the period of probation, or enter any other order of disposition specified in section 16-2320 for a delinquent child. (July 29, 1970, 84 Stat. 538, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2327; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Court's authority after commitment. — The court is without statutory power to intervene after a commitment, even though it is specifically granted the authority to modify or revoke a dispositional order placing a juvenile on probation. In re J.M.W., App. D.C., 411 A.2d 345 (1980).

Corporation Counsel's authority not restricted. — This section places no restrictions on the Corporation Counsel's authority to file delinquency or probation revocation petitions. In re B.P., App. D.C., 397 A.2d 974 (1979).

Conformance of juvenile detention procedures required. — This section requires

that the procedures for detaining a juvenile pending a hearing on probation revocation conform, as nearly as is appropriate, with procedures established for detaining juveniles in other circumstances. In re B.P., App. D.C., 397 A.2d 974 (1979).

Standard of proof. — The appropriate standard of proof in a probation revocation hearing is the preponderance of the evidence standard. United States v. Johnson, 123 WLR 2373 (Super. Ct. 1995).

Cited in In re C.S., App. D.C., 384 A.2d 407 (1977); Choco v. United States, App. D.C., 383 A.2d 333 (1978); Harris v. United States, App. D.C., 612 A.2d 198 (1992), cert. denied, 507 U.S. 1022, 113 S. Ct. 1826, 123 L. Ed. 2d 455 (1993).

§ 16-2328. Interlocutory appeals.

(a) A child who has been ordered transferred for criminal prosecution under section 16-2307 or detained or placed in shelter care or subjected to conditions of release under section 16-2312, may, within two days of the date of entry of the Division's order, file a notice of interlocutory appeal.

(b) The District of Columbia Court of Appeals shall (1) hear argument on an appeal under subsection (a) on or before the third day (excluding Sundays) after the filing of notice under that subsection, (2) dispense with any requirement of written briefs other than the supporting materials previously submitted to the Division, and (3) render its decision on or before the next day following argument on appeal. The court may in rendering its decision dispense with the issuance of a written opinion.

(c) In cases involving transfer for criminal prosecution, the pendency of an interlocutory appeal shall act to stay criminal proceedings. Until the time for filing an interlocutory appeal has lapsed, or if an appeal is filed until its completion, no child who has been ordered transferred for criminal prosecution shall be removed to a place of adult detention, except as provided in section 16-2313, or otherwise treated as an adult.

(d) The decision of the District of Columbia Court of Appeals shall be final. (July 29, 1970, 84 Stat. 538, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2328; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Applicability to original order of detention. — The references in subsection (a) of this section to § 16-2312 and "entry of the [Family] Division's order" make clear that this expedited

appeal procedure applies to an original order of detention under § 16-2312, not to subsequent orders denying reconsideration of the detention order. In re K.H., App. D.C., 647 A.2d 61 (1994).

Necessary parties. — Where it was not a child who filed an interlocutory appeal, but

rather her mother, the Court of Appeals lacked jurisdiction pursuant to this section. In re S.J., App. D.C., 632 A.2d 112 (1993).

Review of probable cause determination. — The division's probable cause determination of delinquency is subject to review by interlocutory appeal. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Refusal to reconsider prior detention order may be viewed as final order. — An order denying an application to reconsider a prior detention order may be viewed as a final order, to which the 2-day limitation does not apply. In re M.L. DeJ., App. D.C., 310 A.2d 834 (1973).

Burden of proof. — A child seeking a sum-

mary reversal of an order detaining him pending trial on criminal charges has the burden of demonstrating that the merits of his claim so clearly warrant relief as to justify expedited action. In re M.L. DeJ., App. D.C., 310 A.2d 834 (1973).

Record on appeal. — The record on appeal from an order detaining a child pending trial must indicate the factors relied upon by the lower court. In re M.L. DeJ., App. D.C., 310 A.2d 834 (1973).

Cited in In re A.H., App. D.C., 459 A.2d 1045 (1983); In re S.C.M., App. D.C., 653 A.2d 398 (1995); In re S.J., App. D.C., 686 A.2d 1024 (1996).

§ 16-2329. Finality of judgments; appeals; transcripts.

(a) Except as otherwise expressly provided by law, in all hearings and cases tried before the Division pursuant to this subchapter, the judgment of the Division is final.

(b) In all appeals from decisions of the Division with respect to a child alleged to be neglected, delinquent, or in need of supervision, the child shall be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.

(c) Upon the filing of a motion and supporting affidavit stating that he is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal shall be furnished, at no cost or at such part of cost as he is able to pay, so much of the transcript as is necessary adequately to prepare and support the appeal.

(d) An appeal does not operate to stay the order, judgment, or decree appealed from, but on application and hearing whenever the case is properly before the appellate court, that court may order otherwise if suitable provision is made for the care and custody of the child. (July 29, 1970, 84 Stat. 538, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2329; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

Section references. — This section is referred to in § 16-2362.

Legislative history of Law 2-22. — See note to § 16-2301.

Appealable orders. — A ruling by the court denying a motion for a new trial or a motion for a new fact-finding hearing constitutes an appealable order where the motion is based on newly discovered evidence. In re E.G.C., App. D.C., 373 A.2d 903 (1977).

Appeal from conviction in Division not moot simply because of subsequent dis-

charge. — An appeal from a conviction in the Division is not moot simply because the defendant is discharged from the jurisdiction of the Division, where there is the possibility of adverse collateral effects in a later criminal proceeding resulting from the use of the juvenile records. In re S.W.B., App. D.C., 321 A.2d 564 (1974).

Time limits for appeal. — An appeal from order terminating parental rights has to be taken within 30 days. In re C.I.T., App. D.C., 369 A.2d 171 (1977).

§ 16-2330. Time computation.

(a) In all proceedings in the Division, time limitations shall be reasonably construed by the Division for the protection of the community and of the child.

(b) The following periods shall be excluded in computing the time limits established for proceedings under this subchapter:

(1) The period of delay resulting from a continuance granted, upon grounds constituting unusual circumstances, at the request or with the consent, in any case, of the child or his counsel, or, in neglect cases, also of the parent, guardian, or custodian.

(2) The period of delay resulting from other proceedings concerning the child, including but not limited to an examination or hearing on mental health or retardation and a hearing on a transfer motion.

(3) The period of delay resulting from a continuance granted at the request of the Corporation Counsel if the continuance is granted because of the unavailability of evidence material to the case, when the Corporation Counsel has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or if the continuance is granted to allow the Corporation Counsel additional time to prepare his case and additional time is required due to the exceptional circumstances of the case.

(4) The period of delay resulting from the imposition of a consent decree.

(5) The period of delay resulting from the absence or unavailability of the child.

(6) A reasonable period of delay when the child is joined for a hearing with another child as to whom the time for a hearing has not run and there is good cause for not hearing the case separately. (July 29, 1970, 84 Stat. 539, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2330; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

Legislative history of Law 2-22. — See **Cited in** In re D.H., App. D.C., 666 A.2d 462 note to § 16-2301. (1995).

§ 16-2331. Juvenile case records; confidentiality; inspection and disclosure.

(a) As used in this section, the term “juvenile case records” refers to the following records of a case over which the Division has jurisdiction under section 11-1101(13):

(1) Notices filed with the court by an arresting officer pursuant to this subchapter.

(2) The docket of the court and entries therein.

(3) Complaints, petitions, and other legal papers filed in the case.

(4) Transcripts of proceedings before the court.

(5) Findings, verdicts, judgments, orders, and decrees.

(6) Other writings filed in proceedings before the court, other than social records.

(b) Juvenile case records shall be kept confidential and shall not be open to inspection; but, subject to the limitations of subsection (c) of this section, the inspection of those records shall be permitted to —

(1) judges and professional staff of the Superior Court;

(2) the Corporation Counsel and his assistants assigned to the Division;

(3) the respondent, his parents or guardians, and their duly authorized attorneys;

(4) any court or its probation staff, for purposes of sentencing the respondent as a defendant in a criminal case and the counsel for the defendant in that case;

(5) public or private agencies or institutions providing supervision or treatment or having custody of the child, if supervision, treatment, or custody is under order of the Division;

(6) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys involved in the investigation or trial of a criminal case arising out of the same transaction or occurrence as a case in which a child is alleged to be delinquent, or where the records are involved in determining the conditions of release or bail for a person charged with a criminal offense;

(7) other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of his family, or in the work of the Superior Court, if authorized by rule or special order of the court.

(8) the Mayor in accordance with the Motor Vehicle Operator's Permit Revocation Amendment Act of 1988; and

(9) a court in which a person is charged with a criminal offense for the purposes of determining conditions of release or bail.

Records inspected may not be divulged to unauthorized persons. The prosecuting attorney inspecting records pursuant to paragraph (6) of this subsection may divulge the contents to the extent required in the prosecution of a criminal case, and the United States Attorney for the District of Columbia and his assistants may inspect a transcript of the testimony of any witness and divulge the contents to the extent required by the prosecution of the witness for perjury, without, wherever possible, naming or otherwise revealing the identity of a child under the jurisdiction of the Division.

(c) Notwithstanding subsection (b), the Superior Court may by rule or special order provide that particular items or classes of items in juvenile case records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection (1) in delinquency or need of supervision cases, by the attorney for the child, or (2) in neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

(d) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them. No person receiving any record or information pursuant to this section

may publish or use it for any purpose other than that for which it was received without a special order of the court.

(e) No person shall disclose, inspect, or use records in violation of this section. (July 29, 1970, 84 Stat. 539, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2331; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Mar. 16, 1989, D.C. Law 7-222, § 4, 36 DCR 570; May 15, 1993, D.C. Law 9-272, § 105, 40 DCR 796; Apr. 9, 1997, D.C. Law 11-255, § 18(h), 44 DCR 1271.)

Section references. — This section is referred to in §§ 16-2302, 16-2335, 16-2336, and 16-2363.

Effect of amendments. — D.C. Law 11-255 inserted “of this section” in the introductory paragraph of (b).

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 7-222. — See note to § 16-2318.

Legislative history of Law 9-272. — See note to § 16-2307.

Legislative history of Law 11-255. — See note to § 16-2309.

References in text. — The “Motor Vehicle Operator’s Permit Revocation Amendment Act of 1988,” referred to in paragraph (b)(8), is D.C. Law 7-222 which is codified as §§ 16-2318 and 16-2331 and notes to § 40-302.1.

Exception to confidentiality rule. — The confidentiality statutes do not bar the admission of evidence of appellee/prisoner’s violent juvenile history in his negligence suit against the District in which the primary element of the claim for damages is the alleged psychological injury resulting from his being shot while incarcerated. *District of Columbia v. Cooper*, App. D.C., 483 A.2d 317 (1984).

Access to records by defense counsel in criminal cases. — Subsection (b) does not provide for access to juvenile records by defense counsel in criminal cases; these attorneys would have to come within the language “other

persons having a professional interest in the ... work of the Superior Court, if authorized by rule or special order of the court.” A defense attorney is arguably sufficiently interested in the work of the Superior Court, as it pertains to his or her client, to fall within this provision. *Frye v. United States*, App. D.C., 600 A.2d 808 (1991).

Cross-examination of character witness. — Character witness may be cross-examined about the wrongful acts of the defendant that underlie juvenile adjudications subject to the heavy responsibility of the trial court to prevent any abuse. *Devore v. United States*, App. D.C., 530 A.2d 1173 (1987).

Compliance with terms of probation. — Unlike the advantages available under § 33-541(e), the protections available under this chapter are not conditioned upon compliance with terms of probation. *In re D.F.S.*, App. D.C., 684 A.2d 1281 (1996).

Cited in *Teasley v. United States*, 662 F.2d 787 (D.C. Cir. 1980); *United States v. Edwards*, App. D.C., 430 A.2d 1321 (1981), cert. denied, 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141 (1982); *McAdoo v. United States*, App. D.C., 515 A.2d 412 (1986); *In re L.J.*, App. D.C., 546 A.2d 429 (1988); *Newspapers, Inc. v. Metropolitan Police Dep’t*, App. D.C., 546 A.2d 990 (1988); *Rogers v. United States*, App. D.C., 566 A.2d 69 (1989); *N.H. v. District of Columbia*, App. D.C., 569 A.2d 1179 (1990).

§ 16-2332. Juvenile social records; confidentiality; inspection and disclosure.

(a) As used in this section, the term “juvenile social records” refers to all social records made with respect to a child in any proceedings over which the Division has jurisdiction under section 11-1101(13), including preliminary inquiries, predisposition studies, and examination reports.

(b) Juvenile social records shall be kept confidential and shall not be open to inspection; but, subject to the limitations of subsection (c), the inspection of those records shall be permitted to —

(1) judges and professional staff of the Superior Court and the Corporation Counsel and his assistants assigned to the Division;

(2) the attorney for the child at any stage of a proceeding in the Division, including intake;

(3) any court or its probation staff, for purposes of sentencing the child as a defendant in a criminal case, and, if and to the extent other presentence materials are disclosed to him, the counsel for the defendant in that case;

(4) public or private agencies or institutions providing supervision or treatment, or having custody of the child, if the supervision, treatment, or custody is under order of the Division; and

(5) other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of his family, or in the work of the Division, if authorized by rule or special order of the court.

(6) professional employees of the Social Rehabilitation Administration of the Department of Human Services when necessary for the discharge of their official duties.

Records inspected may not be divulged to unauthorized persons.

(c) Notwithstanding subsection (b), the Superior Court may by rule or special order provide that particular items or classes of items in juvenile social records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection (1) in delinquency or need of supervision cases, by the attorney for the child, or (2) in neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

(d) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile social records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

(e) No person shall disclose, inspect, or use records in violation of this section. (July 29, 1970, 84 Stat. 540, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2332; Sept. 23, 1977, D.C. Law 2-22, title I, § 110(g), title IV, § 408(a), 24 DCR 3341.)

Section references. — This section is referred to in §§ 16-2302, 16-2335, 16-2336, and 16-2363.

Legislative history of Law 2-22. — See note to § 16-2301.

Definitions applicable. — See note to § 16-2301.

Exception to confidentiality rule. — The confidentiality statute does not bar the admission of evidence of appellee/prisoner's violent juvenile history in his negligence suit against the District in which the primary element of the claim for damages was the alleged psycho-

logical injury resulting from his being shot while incarcerated. District of Columbia v. Cooper, App. D.C., 483 A.2d 317 (1984).

Cited in Collins v. United States, App. D.C., 491 A.2d 480 (1985), cert. denied, 475 U.S. 1124, 106 S. Ct. 1646, 90 L. Ed. 2d 190 (1986); Newspapers, Inc. v. Metropolitan Police Dep't, App. D.C., 546 A.2d 990 (1988); N.H. v. District of Columbia, App. D.C., 569 A.2d 1179 (1990); Frye v. United States, App. D.C., 600 A.2d 808 (1991); Watson v. United States, App. D.C., 612 A.2d 179 (1992); In re D.F.S., App. D.C., 684 A.2d 1281 (1996).

§ 16-2333. Police and other law enforcement records.

(a) Law enforcement records and files concerning a child shall not be open to public inspection nor shall their contents or existence be disclosed to the public unless a charge of delinquency is transferred for criminal prosecution under

section 16-2307, the interest of national security requires, or the court otherwise orders in the interest of the child.

(b) Inspection of such records and files is permitted by —

(1) the Superior Court, having the child currently before it in any proceedings;

(2) the officers of public and private institutions or agencies to which the child is currently committed, and those professional persons or agencies responsible for his supervision after release;

(3) any other person, agency or institution, by order of the court, having a professional interest in the child or in the work of the law enforcement department;

(4) law enforcement officers of the United States, the District of Columbia, and other jurisdictions when necessary for the discharge of their current official duties;

(5) a court in which a person is charged with a criminal offense for the purposes of determining conditions of release or bail;

(6) a court in which a person is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him; and

(7) the parent, guardian, or other custodian and counsel for the child; and

(8) professional employees of the Social Rehabilitation Administration of the Department of Human Services when necessary for the discharge of their official duties.

(c) Photographs may be displayed to potential witnesses for identification purposes, in accordance with the standards of fairness applicable to adults.

(d) No person shall disclose, inspect, or use records or files in violation of this section. (July 29, 1970, 84 Stat. 541, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2333; Sept. 23, 1977, D.C. Law 2-22, title I, § 110(h), title IV, § 408(a), 24 DCR 3341.)

Section references. — This section is referred to in §§ 16-2302, 16-2335, and 16-2336.

Legislative history of Law 2-22. — See note to § 16-2301.

Definitions applicable. — See note to § 16-2301.

Cited in *United States v. Edwards*, App. D.C., 430 A.2d 1321 (1981), cert. denied, 455

U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141 (1982); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *N.H. v. District of Columbia*, App. D.C., 569 A.2d 1179 (1990); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995); *In re D.F.S.*, App. D.C., 684 A.2d 1281 (1996).

§ 16-2334. Fingerprint records.

(a) The contents or existence of law enforcement records and files of the fingerprints of a child shall not be disclosed by the custodians thereof, except—

(1) to a law enforcement officer of the United States, the District of Columbia, or other jurisdiction for purposes of the investigation and trial of a criminal offense; or

(2) pursuant to rule or special order of the court.

(b) When a child is transferred for criminal prosecution under section 16-2307, law enforcement records and files of his fingerprints relating to any matter so transferred shall be deemed those of an adult.

(c) No person shall disclose, inspect, or use records in violation of this section. (July 29, 1970, 84 Stat. 542, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2334; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

Section references. — This section is referred to in §§ 16-2302 and 16-2336.

Legislative history of Law 2-22. — See note to § 16-2301.

Cited in Newspapers, Inc. v. Metropolitan

Police Dep't, App. D.C., 546 A.2d 990 (1988); N.H. v. District of Columbia, App. D.C., 569 A.2d 1179 (1990); In re D.F.S., App. D.C., 684 A.2d 1281 (1996).

§ 16-2335. Sealing of records.

(a) On motion of a person who has been the subject of a petition filed pursuant to section 16-2305, or on the Division's own motion, the Division shall vacate its order and findings and shall order the sealing of the case and social records referred to in sections 16-2331 and 16-2332 and the law enforcement records and files referred to in section 16-2333, or those of any other agency active in the case if it finds that —

(1)(A) a neglected child has reached his majority; or

(B) two years have elapsed since the final discharge of the person from legal custody or supervision, or since the entry of any other Division order not involving custody or supervision; and

(2) he has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication.

(b) Reasonable notice of a motion shall be given to —

(1) the person who is the subject of the petition;

(2) the Corporation Counsel;

(3) the authority granting the discharge, if the final discharge was from an institution, parole, or probation; and

(4) the law enforcement department having custody of the files and records specified in section 16-2333.

(c) Upon the entry of the order, the proceedings in the case shall be treated as if they never occurred. All facts relating to the action including arrest, the filing of a petition, and the adjudication, filing, and disposition of the Division shall no longer exist as a matter of law. The Division, the law enforcement department, or any other department or agency that received notice under subsection (b) and was named in the order shall reply, and the person who is the subject matter of the records may reply, to any inquiry that no record exists with respect to such person.

(d) Inspection of the files and records included in the order may thereafter be permitted by the Division only upon motion by the person who is the subject of such records, and may be made only by those persons named in the motion; but the Division in its discretion may, by special order in an individual case, permit inspection by or release of information in the records to persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the person who is the subject of the petition or other members of his family.

(e) Any adjudication of delinquency or need of supervision or conviction of a felony subsequent to sealing shall have the effect of nullifying the vacating and sealing order.

(f) A person who has been the subject of a petition filed under this subchapter shall be notified of his rights under subsection (a) at the time a dispositional order is entered and again at the time of his final discharge from supervision, treatment, or custody.

(g) No person shall disclose, receive, or use records in violation of this section. (July 29, 1970, 84 Stat. 542, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2335; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

Section references. — This section is referred to in §§ 16-2302, 16-2322, and 16-2336.

Legislative history of Law 2-22. — See note to § 16-2301.

Source of Court's authority. — The Court's authority to seal records is not founded on doctrine of *parens patriae*, for Congress has limited the authority of the court to seal records to situations where the requirements of this section are satisfied. *In re R.T.*, App. D.C., 345 A.2d 156 (1975).

Cited in *Doe v. Webster*, 606 F.2d 1226 (D.C. Cir. 1979); *McAdoo v. United States*, App. D.C., 515 A.2d 412 (1986); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *Rogers v. United States*, App. D.C., 566 A.2d 69 (1989); *N.H. v. District of Columbia*, App. D.C., 569 A.2d 1179 (1990); *In re D.F.S.*, App. D.C., 684 A.2d 1281 (1996).

§ 16-2336. Unlawful disclosure of records; penalties.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of sections 16-2331 through 16-2335, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250 or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia. (July 29, 1970, 84 Stat. 543, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2336; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 4(q), 35 DCR 147.)

Section references. — This section is referred to in § 16-2302.

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 7-104. — See note to § 16-2316.

Cited in *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *N.H. v. District of Columbia*, App. D.C., 569 A.2d 1179 (1990).

§ 16-2337. Additional powers of the Director of Social Services.

In addition to the powers and duties prescribed in section 11-1722, the Director of Social Services shall have power to take into custody and place in detention or shelter care, in accordance with this subchapter, children who are under his supervision as delinquent, in need of supervision, or neglected, or children who have run away from agencies or institutions to which they were committed under this subchapter. (July 29, 1970, 84 Stat. 543, Pub. L. 91-358,

title I, § 121(a); 1973 Ed., § 16-2337; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

§ 16-2338. Emergency medical treatment.

Nothing in this subchapter shall prevent a public agency having custody of a child who is under jurisdiction of the Division from providing the child with emergency medical treatment. (July 29, 1970, 84 Stat. 543, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2338; Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

§ 16-2339. Immunity for juveniles who are witnesses in juvenile proceedings.

(a) Whenever a child, other than a child transferred for criminal prosecution pursuant to section 16-2307, who is called as a witness refuses on the basis of the privilege against self-incrimination to testify or provide other information in or ancillary to a delinquency proceeding brought under this chapter in the Family Division, and the person presiding over the proceeding communicates to the witness an order issued under subsection (c) of this section, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination. However, no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness except in a proceeding for perjury, giving a false statement, or otherwise failing to comply with the order.

(b) The Corporation Counsel may request an order under subsection (c) of this section when the testimony or other information may be necessary to the public interest, and the child called as a witness has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

(c) When any child, other than a child transferred for criminal prosecution pursuant to section 16-2307, has been or may be called to testify or provide other information in or ancillary to a delinquency proceeding brought under this chapter in the Family Division, and the Corporation Counsel has made a request under subsection (b) of this section, the judge presiding over the proceeding shall issue an order requiring the child to give testimony or provide other information which was refused on the basis of the privilege against self-incrimination. An order issued pursuant to this subsection shall become effective as provided in subsection (a) of this section. (May 21, 1994, D.C. Law 10-118, § 2, 41 DCR 1637.)

Legislative history of Law 10-118. — Law 10-118, the “Immunity for Juveniles Who are Witness in Juvenile Proceedings Act of 1994,” was introduced in Council and assigned Bill No. 10-271, which was referred to the Committee on the Judiciary. The Bill was adopted on

first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-208 and transmitted to both Houses of Congress for its review. D.C. Law 10-118 became effective on May 21, 1994.

Subchapter II. Parentage Proceedings.

§ 16-2341. Representation.

(a) Where a public support burden has been incurred or is threatened, or where an individual seeks assistance pursuant to Part D in Title IV of the Social Security Act approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. 651 *et seq.*), the Corporation Counsel or an assistant may bring a civil action in the Family Division to enforce support of any parent or child against an absent parent.

(b) In all cases over which the Division has jurisdiction under paragraphs (3), (4), (10), and (11) of section 11-1101, where the court deems it necessary and proper, an attorney shall be appointed by the court to represent the respondent.

(c) Nothing in this section shall be construed to interfere with the right of an individual to file a civil action over which the Division has jurisdiction under the paragraphs of section 11-1101 referred to in subsection (b). (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2341; Oct. 1, 1976, D.C. Law 1-87, § 20(a), 23 DCR 2544; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(6), 33 DCR 6710.)

Cross references. — As to exclusive jurisdiction of Family Division of Superior Court, see § 11-1101.

As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 16-909.

Legislative history of Law 1-87. — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-166. — Law 6-166, the “District of Columbia Child Support Enforcement Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 8, 1986, and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was as-

signed Act No. 6-212 and transmitted to both Houses of Congress for its review.

Existing paternity suits not abated in 1970. — Although the nature of paternity proceedings changed in 1970, the intent of Congress was that the suits in existence at that time would not abate. *Cupo v. District of Columbia*, App. D.C., 285 A.2d 696 (1972).

Purpose of revisions in paternity proceedings. — The revisions in paternity proceedings by the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Pub. L. 91-358) were intended to remove all criminal trappings from such proceedings and make them expressly civil in nature. *Branch v. Fields*, App. D.C., 496 A.2d 607 (1985).

Paternity proceedings equitable in nature. — Insofar as the central purpose of paternity proceedings is to provide financial support for the child, these actions are equitable in nature. *Branch v. Fields*, App. D.C., 496 A.2d 607 (1985).

Right to jury trial. — The Seventh Amendment right to trial by jury does not attach in proceeding to establish parentage. *Branch v. Fields*, App. D.C., 496 A.2d 607 (1985).

Prior to 1970, a defendant in a paternity proceeding was entitled to trial by jury; under

the District of Columbia Court Reform and Criminal Procedure Act of 1970, however, the jury trial provisions were removed. *Branch v. Fields*, App. D.C., 496 A.2d 607 (1985).

Failure to allege public support burden in petition not fatal defect. — Corporation counsel's petition was not fatally defective for failure to allege that a public support burden existed or was threatened. *M.B. v. District of Columbia*, App. D.C., 478 A.2d 1087 (1984).

Claims of acknowledged illegitimate children take precedence over mother. — Where a man insured under the Federal Employees Group Life Insurance Act dies leaving

no widow and without having designated a beneficiary, the claims of his children who are illegitimate but who have been acknowledged by him are entitled to take precedence over the claim of his mother. *Green v. Green*, App. D.C., 365 A.2d 610 (1976).

Cited in District of Columbia *ex rel. W.J.D. v. E.M.*, App. D.C., 467 A.2d 457 (1983); *Gilliam v. Branton*, App. D.C., 470 A.2d 743 (1983); District of Columbia *v. J.R.M.*, App. D.C., 521 A.2d 1152 (1987); *In re D.M.*, App. D.C., 562 A.2d 618 (1989); *L.A.W. v. M.E.*, App. D.C., 606 A.2d 160 (1992); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 16-2342. Time of bringing complaint.

Proceedings over which the Division has jurisdiction under D.C. Code, sec. 11-1101(3) and (11) to establish parentage and provide for the support of a child may be instituted after four months of pregnancy or at anytime until the child's twenty-first birthday. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2342; Oct. 1, 1976, D.C. Law 1-87, § 20(b), 23 DCR 2544; Sept. 26, 1984, D.C. Law 5-123, § 2, 31 DCR 4056.)

Legislative history of Law 1-87. — See note to § 16-2341.

Legislative history of Law 5-123. — See note to § 16-2343.1.

Constitutionality. — The former two-year limitation of action provision of this section was unconstitutional as it denied equal protection of the laws to children born out of wedlock, in whose behalf suit was not brought within two years of their birth, and whose actions were not within provisions for extending the period of limitations. *District of Columbia ex rel. W.J.D. v. E.M.*, App. D.C., 467 A.2d 457 (1983).

Jurisdictional time limitations. — This section imposes jurisdictional time limitations. *Felder v. Allsopp*, App. D.C., 391 A.2d 243 (1978).

No vested rights in predecessor statute. — Plaintiff did not have a vested right in predecessor statute and current statute of limitations should be applied to a suit filed 20 months after that statute of limitations had become the law. *R.N.M. v. A.N.*, App. D.C., 537 A.2d 579 (1988).

Existing paternity suits not abated in 1970. — Although the nature of paternity proceedings changed in 1970, suits in existence at that time did not abate. *Cupo v. District of Columbia*, App. D.C., 285 A.2d 696 (1972).

Justiciable claim required. — A claim seeking an adjudication of paternity, without any indication of the immediacy or reason such a declaration is required, does not present a

justiciable claim. *In re D.M.*, App. D.C., 562 A.2d 618 (1989).

The Superior Court has jurisdiction to adjudicate paternity where a complaint is filed that pleads a sufficient cause of action, without a claim for support, showing it is not an abstract controversy. *In re D.M.*, App. D.C., 562 A.2d 618 (1989).

Section is not applicable to proceedings to establish right to visitation, in which parentage must be proved solely in order to allow a proper consideration of the request for visitation rights. *Felder v. Allsopp*, App. D.C., 391 A.2d 243 (1978).

Duty to support, which is the underlying purpose for parentage proceedings and which arises automatically upon establishment of parentage by sufficient proof, is distinct from the right to visitation. *Felder v. Allsopp*, App. D.C., 391 A.2d 243 (1978).

Section inapplicable to support petitions. — The statute of limitations period of this section is not applicable to Uniform Reciprocal Enforcement of Support Act petitions. *Harris v. Kinard*, App. D.C., 443 A.2d 25 (1982).

Cited in *Gilliam v. Branton*, App. D.C., 470 A.2d 743 (1983); *Cyrus v. Mondesir*, App. D.C., 515 A.2d 736 (1986); *D.C. v. P.L.*, 118 WLR 1729 (Super. Ct. 1990); *Walker v. Simmons*, 118 WLR 2593 (Super. Ct. 1990); *Davis v. Davis*, 123 WLR 333 (Super. Ct. 1995); *T.M.P. v. G.C.M.*, 124 WLR 233 (Super. Ct. 1995).

§ 16-2342.1. Voluntary acknowledgement of paternity.

The voluntary acknowledgment of paternity pursuant to section 16-909.1(a)(1) shall:

(1) Create a conclusive presumption of paternity, which shall be admissible as evidence of paternity; and

(2) Be recognized as a basis for seeking a child support obligation without requiring any further proceeding to establish paternity. (Mar. 16, 1995, D.C. Law 10-223, § 2(h), 41 DCR 8051.)

Legislative history of Law 10-223. — Law 10-223, the “Paternity Establishment Act of 1994,” was introduced in Council and assigned Bill No. 10-777, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-360 and transmitted to both Houses of Congress for its review. D.C.

Law 10-223 became effective on March 16, 1995.

Mayor authorized to issue rules. — Section 3 of D.C. Law 10- provided that, pursuant to Subtitle I of Chapter 15 of Title 1, the Mayor may issue rules to implement the provisions of the act.

Cited in T.B. v. J.R.W., 124 WLR 417 (Super. Ct. 1996).

§ 16-2343. Tests to establish parentage.

(a)(1) When the Division has jurisdiction of actions or proceedings under section 11-1101, the court, on its own motion, may require, or on the motion of a party, shall require the child, the mother, an alleged parent, or the other parent to submit to medical, genetic blood or tissue grouping tests.

(2) The tests may include the human leukocyte antigen test.

(b)(1) Tests shall be performed by persons qualified as examiners of genetic markers present in the human body.

(2) The examiners may be appointed by the court or chosen by consent of the parties.

(c)(1) The costs for the tests and expert witness appointed by the court shall be paid by the parties.

(2) Where the District of Columbia is a party, the court may order that the District of Columbia pay the costs upon a finding that the alleged parent does not have sufficient resources to pay the costs. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2343; Oct. 1, 1976, D.C. Law 1-87, § 20(c), 23 DCR 2544; Sept. 26, 1984, D.C. Law 5-123, § 3, 31 DCR 4056; Apr. 30, 1988, D.C. Law 7-104, § 4(r), 35 DCR 147; Mar. 8, 1990, D.C. Law 8-72, § 2(a), 36 DCR 8008; May 15, 1990, D.C. Law 8-126, § 2(a), 37 DCR 2091.)

Cross references. — As to exclusive jurisdiction of Family Division of Superior Court, see § 11-1101.

As to proof of child’s relationship to mother and father, see § 16-909.

As to age of majority, see note following § 21-101.

As to child support generally, see § 30-501 et seq.

Legislative history of Law 1-87. — See note to § 16-2341.

Legislative history of Law 5-123. — See note to § 16-2343.1.

Legislative history of Law 7-104. — See note to § 16-2316.

Legislative history of Law 8-72. — Law 8-72, the “Genetic Tests for the Establishment of Paternity Amendment Temporary Act of

1989," was introduced in Council and assigned Bill No. 8-429. The Bill was adopted on first and second readings on October 24, 1989, and November 7, 1989, respectively. Signed by the Mayor on November 13, 1989, it was assigned Act No. 8-111 and transmitted to both Houses of Congress for its review. D.C. Law 8-72 became effective on March 8, 1990.

Legislative history of Law 8-126. — Law 8-126, the "Genetic Tests for the Establishment of Paternity Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-336, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 13, 1990, and February 27, 1990, respectively. Signed by the Mayor on March 15, 1990, it was assigned Act No. 8-179 and transmitted to both Houses of Congress for its review.

Editor's notes. — Section 4(r) of D.C. Law 7-104 purported to substitute "Department of Human Services" for "Department of Public Health" apparently without regard to the amendment to this section by D.C. Law 5-123.

Constitutionality. — This section is not unconstitutional as violative of the constitutional right to privacy and protection against unreasonable searches and seizures in requiring submission to human leukocyte antigen testing. District of Columbia ex rel. M.L.D. v. W.H., 113 WLR 2185 (Super. Ct. 1985).

Nature of human leukocyte antigen test. — Prior to the 1984 amendment of this section by D.C. Law 5-123, a human leukocyte antigen test was not a blood test within the meaning of this section and the results of the test were improperly excluded. Cutchamber v. Payne, App. D.C., 466 A.2d 1240 (1983).

Human Leukocyte Antigen (HLA) testing mandatory. — The D.C. Council's purpose, when amending this section and § 16-2343.1 in 1984 and 1989, was to expedite the resolution of paternity cases by making HLA testing mandatory upon motion of a party or the court, and to provide for the general admissibility of results generated therefrom. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Right to privacy. — Ordering a blood test of a child does not violate his constitutional right

to privacy. Beckwith v. Beckwith, App. D.C., 355 A.2d 537 (1976), aff'd, App. D.C., 379 A.2d 955 (1977), cert. denied, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Subsection (a)(1), as amended, completely eliminates the court's responsibility to consider a party's privacy argument; thus, in cases where the motion is founded on nothing more than mere suspicion, the court is powerless to prevent the testing. The subsection, as amended, also requires the court to ignore whether Human Leukocyte Antigen (HLA) testing serves the child's best interest. Fennell v. Fennell, 122 WLR 20 (Super. Ct. 1993).

Court has jurisdiction to order blood test of child in divorce action. — The court has jurisdiction in an action for an absolute divorce on the grounds of adultery to order the mother to submit her child to a blood test, even though the child is not a party, is not a resident, is not represented by a guardian ad litem, and there is no request for support, maintenance, or custody. Beckwith v. Beckwith, App. D.C., 355 A.2d 537 (1976), aff'd, App. D.C., 379 A.2d 955 (1977), cert. denied, 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405 (1978).

Deoxyribonucleic Acid (DNA) testing. — The process of DNA analysis is not only generally admissible, but when properly performed and analyzed, it also appears to be universally admissible, by both federal and state courts alike applying either the Frye (general acceptance) standard or the relevancy (reasonable reliance) approach. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Deoxyribonucleic Acid (DNA) paternity analysis is presumptively reliable, and thus, admissible in a proceeding for the establishment of paternity, unless a party opposing its admission into evidence makes a substantiated objection. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Cited in Rachal v. Rachal, App. D.C., 412 A.2d 1202 (1980), modified, App. D.C., 489 A.2d 476 (1985); S.A. v. M.A., App. D.C., 531 A.2d 1246 (1987); R.N.M. v. A.N., App. D.C., 537 A.2d 579 (1988); T.B. v. J.R.W., 124 WLR 417 (Super. Ct. 1996).

§ 16-2343.1. Admissibility of tests.

(a)(1) Expert reports that show the statistical probability of the alleged parent's paternity may be admissible into evidence.

(2) Certified documentation of the chain of custody of the test specimens is competent evidence to establish the chain of custody.

(3) Test results that show the statistical probability of the alleged parent's paternity shall be admitted into evidence unless a substantiated objection is made that the test did not comply with the requirements of this subchapter.

(b)(1) If the test results or the expert's analysis of the test results are disputed, a party must file its specific objections in writing with the court within 45 days of the date the results were mailed by the court to the party.

(2) The court shall not accept objections made less than 5 days prior to the date of trial.

(c) Unless a party timely objects pursuant to subsection (b) of this section, the following apply:

(1) The parties waive their objections to the testing procedures, the admission into evidence of the results of the test and the report on the statistical probability of paternity.

(2) The verified results of the tests and the report are admissible into evidence at a hearing or other proceeding without need for foundation testimony or other proof of authenticity or accuracy regardless of the presence or non-presence of parties having notice of the action.

(3) Whenever the results of the tests and report exclude the alleged parent as the parent of the child, that evidence shall be conclusive evidence of nonpaternity, unless contrary test results are received.

(d)(1) If the results of the tests and report of the evidence relating to the alleged parent's paternity of the child are disputed, the court, absent an agreement between the parties, shall resolve all disputes.

(2) The court may order that additional tests be made at the expense of the objecting party.

(e) A conclusive presumption of paternity shall be created upon a genetic test result and an affidavit from a laboratory, certified by the American Association of Blood Banks, that indicates a 99% probability that the putative father is the father of the child and the Division shall enter a judgment finding the parentage of the child. (Sept. 26, 1984, D.C. Law 5-123, § 3, 31 DCR 4056; Mar. 8, 1990, D.C. Law 8-72, § 2(b), 36 DCR 8008; May 15, 1990, D.C. Law 8-126, § 2(b), 37 DCR 2091; Mar. 16, 1995, D.C. Law 10-223, § 2(i), 41 DCR 8051.)

Effect of amendments. — D.C. Law 10-223 inserted "without need for foundation testimony or other proof of authenticity or accuracy" in (c)(2); and added (e).

Legislative history of Law 5-123. — Law 5-123, the "Percentage and Support Proceedings Reform Act of 1984," was introduced in Council and assigned Bill No. 5-366, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 12, 1984, and June 26, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-175 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-72. — See note to § 16-2343.

Legislative history of Law 8-126. — See note to § 16-2343.

Legislative history of Law 10-223. — See note to § 16-2342.1.

Mayor authorized to issue rules. — See note to § 16-2342.1.

Availability of expert witnesses. — In view of timing irregularities and the lack of written objection from the putative father, the District's failure to have expert witnesses available was not a proper basis for excluding human leukocyte antigen test results that were available to the trial court. District of Columbia ex rel. W.J.D. v. E. McB., App. D.C., 557 A.2d 941 (1989).

Human Leukocyte Antigen (HLA) testing. — The D.C. Council's purpose, when amending D.C. Code § 16-2343 and this section in 1984 and 1989, was to expedite the resolution of paternity cases by making HLA testing mandatory upon motion of a party or the court, and to provide for the general admissibility of results generated therefrom. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Deoxyribonucleic Acid (DNA) testing. — The process of DNA analysis is not only generally admissible, but when properly performed

and analyzed, it also appears to be universally admissible, by both federal and state courts alike applying either the Frye (general acceptance) standard or the relevancy (reasonable reliance) approach. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Deoxyribonucleic Acid (DNA) paternity analysis is presumptively reliable, and thus, admissible in a proceeding for the establishment of paternity, unless a party opposing its admission into evidence makes a substantiated objection. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Test results held admissible. — The HLA tests and the DNA analyses were properly performed in accordance with statutory prerequisites and established standards that enjoy

general acceptance in the scientific community and the results thereof, including statistical probabilities of paternity, were therefore admissible into evidence as a matter of law. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Waiver of opportunity to contest test results. — Where the defendant did not file written objections to the test results of plaintiff's other boyfriend, he waived his opportunity to contest them. W.M. v. D.S.C., App. D.C., 591 A.2d 837 (1991).

Cited in District of Columbia v. J.R.M., App. D.C., 521 A.2d 1152 (1987); R.N.M. v. A.N., App. D.C., 537 A.2d 579 (1988); Andrea v. Murillo, 121 WLR 2133 (Super. Ct. 1993).

§ 16-2343.2. Sanctions.

If any party refuses to submit to a test the party may be punished by contempt or by other sanctions that the court considers appropriate. (Sept. 26, 1984, D.C. Law 5-123, § 3, 31 DCR 4056.)

Legislative history of Law 5-123. — See note to § 16-2343.1.

Default of paternity case. — This section empowers the trial court, in the exercise of sound discretion, to enter a default as to the paternity of a putative father who unreasonably refuses to take the Human Leukocyte Antigen test. The refusal to take a lawfully

ordered HLA test deserves, potentially, a more serious sanction than does a mere failure to file an answer to a complaint alleging paternity. District of Columbia v. J.R.M., App. D.C., 521 A.2d 1152 (1987).

Cited in R.N.M. v. A.N., App. D.C., 537 A.2d 579 (1988); District of Columbia ex rel. W.J.D. v. E. McB., App. D.C., 557 A.2d 941 (1989).

§ 16-2343.3. Default order.

In the event the defendant fails to appear, a default order shall be entered in a paternity case upon a showing of service of process on the defendant. (Mar. 16, 1995, D.C. Law 10-223, § 2(j), 41 DCR 8051; July 25, 1995, D.C. Law 11-30, § 14, 42 DCR 1547; Apr. 18, 1996, D.C. Law 11-110, § 66, 43 DCR 530.)

Effect of amendments. — D.C. Law 11-30 made a technical correction to D.C. Law 10-223, with no effect on text.

D.C. Law 11-110 validated a previously made technical correction in D.C. Law 10-223, with no effect on text.

Legislative history of Law 10-223. — See note to § 16-2342.1.

Legislative history of Law 11-30. — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on February 7, 1995 and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

Legislative history of Law 11-110. — See note to § 16-2301.

Mayor authorized to issue rules. — See note to § 16-2342.1.

§ 16-2344. Exclusion of public.

Upon trial or proceedings over which the Division has jurisdiction under paragraph (3), (4), (10), or (11) of section 11-1101, the court may exclude the general public and, at the request of either party, shall exclude the general

public. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2344.)

Cited in *Morgan v. Foretich*, App. D.C., 521 A.2d 248 (1987).

§ 16-2345. New birth record upon marriage or determination of natural parents.

When a certified copy of a marriage certificate is submitted to the Registrar, establishing that the previously unwed parents of a child born out of wedlock have intermarried subsequent to the birth of the child, and the parentage of the child has been judicially determined or acknowledged by each of the parents, or when the parenthood of a child born out of wedlock has been established by judicial process or by acknowledgment by the person whose parenthood is thus determined, or when an agreement and affidavit that meet the requirements of section 16-909.1(a)(2) are submitted to the Registrar, a new certificate of birth bearing the original date of birth and the names of both parents shall be issued and substituted for the certificate of birth then on file. The new birth certificate shall nowhere on its face show that the parentage has been established by judicial process or by acknowledgment. The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal and opened for inspection only upon order of the Family Division. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2345; Oct. 1, 1976, D.C. Law 1-87, § 20(d), 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 112, 23 DCR 8737; Oct. 8, 1981, D.C. Law 4-34, § 29(g), 28 DCR 3271; June 18, 1991, D.C. Law 9-5, § 2(e), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 2(e), 38 DCR 4970; Apr. 9, 1997, D.C. Law 11-255, § 18(i), 44 DCR 1271.)

Section references. — This section is referred to in § 6-210.

Effect of amendments. — D.C. Law 11-255 validated a previously made spelling and punctuation correction in the second sentence.

Legislative history of Law 1-87. — See note to § 16-2341.

Legislative history of Law 1-107. — Law 1-107, the "Marriage and Divorce Act," was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976, and September 15, 1976, and second readings on November 22, 1976, and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-34. — Law 4-34, the "Vital Records Act of 1981," was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Hu-

man Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-5. — Law 9-5, the "District of Columbia Paternity Establishment Temporary Act of 1991," was introduced in Council and assigned Bill No. 9-142. The Bill was adopted on first and second readings on March 5, 1991, and April 9, 1991, respectively. Signed by the Mayor on April 26, 1991, it was assigned Act No. 9-20 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-39. — Law 9-39, the "District of Columbia Paternity Establishment Act of 1991," was introduced in Council and assigned Bill No. 9-2, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was

assigned Act No. 9-76 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11- (Act 11-519). — See note to § 16-2309.

Request to change surname granted. — Considering factors relating to the best interest

of the child, the court granted a natural father's request to change the surname of his child, born out of wedlock, to reflect his surname, despite the mother's opposition. *D.S. v. A.E.H.*, 117 WLR 2301 (Super. Ct. 1989).

§ 16-2346. Certificate to Registrar.

(a) Upon entry of a final judgment determining the parentage of a child born out of wedlock, the clerk of the court shall forward a certificate to the Registrar of the District of Columbia, or his authorized representative in the jurisdiction in which the child was born, giving the names of the persons adjudged to be the father and mother of the child.

(b) Repealed. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 545, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2346; Oct. 1, 1976, D.C. Law 1-87, § 20(e), 23 DCR 2544; Oct. 8, 1981, D.C. Law 4-34, § 29(h), 28 DCR 3271.)

Section references. — This section is referred to in § 16-2348.

Legislative history of Law 1-87. — See note to § 16-2341.

Legislative history of Law 4-34. — See note to § 16-2345.

§ 16-2347. Death of respondent; liability of estate.

If the respondent dies after parentage has been established and prior to the time the child reaches the age at which the child ceases to be a minor, any sums due and unpaid under an order of the court at the time of his or her death shall constitute a valid claim against his or her estate. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 545, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2347; Oct. 1, 1976, D.C. Law 1-87, § 20(f), 23 DCR 2544.)

Cross references. — As to age of majority, see note following § 21-101.

Legislative history of Law 1-87. — See note to § 16-2341.

Claims of acknowledged illegitimate children take precedence over mother. — Where a man insured under the Federal Em-

ployees Group Life Insurance Act dies leaving no widow and without having designated a beneficiary, the claims of his children who are illegitimate but who have been acknowledged by him are entitled to take precedence over the claim of his mother. *Green v. Green*, App. D.C., 365 A.2d 610 (1976).

§ 16-2348. Parentage records; confidentiality; inspection and disclosure.

(a) Except on order of the Family Division, no records in a case over which the Division has jurisdiction under section 11-1101(11) shall be open to inspection by anyone other than the plaintiff, respondent, their attorneys of record, or authorized professional staff of the Superior Court. The Family Division, upon proper showing, may authorize the furnishing of certified copies of the records or portions thereof to the respondent, the other parent, or custodian of the child, a party in interest, or their duly authorized attorneys. Certified copies of the records or portions thereof may be furnished, upon

request, to the Corporation Counsel for use as evidence in nonsupport proceedings and to the Registrar as provided by section 16-2346(a).

(b) No person shall disclose, receive, or use records in violation of this section. Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information in violation of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250 or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 545, Pub. L. 91-358, title I, § 121(a); 1973 Ed., § 16-2348; Oct. 1, 1976, D.C. Law 1-87, § 20(g), 23 DCR 2544; Oct. 8, 1981, D.C. Law 4-34, § 29(a), 28 DCR 3271; Apr. 30, 1988, D.C. Law 7-104, § 4(s), 35 DCR 147.)

Legislative history of Law 1-87. — See note to § 16-2341.

Legislative history of Law 4-34. — See note to § 16-2345.

Legislative history of Law 7-104. — See note to § 16-2316.

Editor's notes. — Section 4(s) of D.C. Law 7-104 purported to substitute "Director of the Department of Human Services" for "Director of Public Health" in subsection (a) apparently without regard to the amendment of this section by D.C. Law 4-34.

Subchapter III. Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children.

§ 16-2351. Purpose of the subchapter; construction of provisions.

(a) The general purposes of this subchapter are to:

(1) encourage stability in the lives of certain children who have been adjudicated neglected and have been removed from the custody of their parent by providing judicial procedures for the permanent termination of the parent and child relationship in the circumstances set forth in this subchapter;

(2) ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others; and

(3) increase the opportunities for the prompt adoptive placement of children for whom parental rights have been terminated.

(b) This subchapter shall be liberally construed to promote the general purposes stated in this section. (1973 Ed., § 16-2351; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Definitions applicable. — See note to § 16-2301.

Time limitations of § 16-2322 apply to orders terminating visitation rights. — Nothing in this subchapter modifies the prior law that in child neglect proceedings dispositional orders concerning termination of parental visitation rights, as such, are subject to the

time limitations in § 16-2322, because enactment of the procedure in this subchapter for permanently terminating all parental rights in order to facilitate adoption does not imply authority of the court to order permanent termination of fewer than all parental rights, such as the right to visitation. In re H.M., App. D.C., 386 A.2d 707 (1978).

Effort by custodial agency to reunite family. — There is no express requirement in

this section that the agency having custody of a neglected child demonstrate that it has made reasonable efforts to reunite parent and child before the government or a guardian, acting on behalf of the child, can institute termination proceedings, nor before the court can decide such cases. *Johnson v. United States*, App. D.C., 597 A.2d 917 (1991).

The effort of the public custodial agency to reintegrate the family is a relevant factor in the decision-making process in a proceeding to terminate parental rights. *Johnson v. United States*, App. D.C., 597 A.2d 917 (1991).

Termination of parental rights is not precluded solely because the custodial agency has failed in its responsibility to make efforts to reunify the family. *Johnson v. United States*, App. D.C., 597 A.2d 917 (1991).

Resolution of paternity claims. — In a termination of parental rights proceeding, the trial court has the authority to resolve finally any claimed putative father's right to assert paternity in a subsequent proceeding provided he has been served properly with notice and has been afforded an opportunity to be heard on the issue. *In re T.M.*, App. D.C., 665 A.2d 207 (1995).

Since neither putative father had established paternity in accordance with D.C. Code § 16-

909, the trial court had discretion to terminate any rights of the putative fathers. *In re T.M.*, App. D.C., 665 A.2d 207 (1995).

Private cause of action. — Children in foster care and children reported to have been abused or neglected but not yet in the District's custody have a private cause of action for enforcement of the Prevention of Child Abuse and Neglect Act. *LaShawn A. ex rel. Moore v. Kelly*, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994).

Cited in *In re K.J.L.*, App. D.C., 434 A.2d 1004 (1981); *In re M.M.M.*, App. D.C., 485 A.2d 180 (1984); *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989); *In re O.L.*, 117 WLR 1329 (Super. Ct. 1989); *In re A.W.*, App. D.C., 569 A.2d 168 (1990); *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994); *S.S. v. D.M.*, App. D.C., 597 A.2d 870 (1991); *In re Baby Girl D.S.*, App. D.C., 600 A.2d 71 (1991); *E.C. v. District of Columbia*, 119 WLR 1033 (Ct. App. 1991); *Johnson v. United States*, App. D.C., 616 A.2d 1216 (1992), cert. denied, 507 U.S. 996, 113 S. Ct. 1611, 123 L. Ed. 2d 172 (1993); *LaShawn A. v. Barry*, 87 F.3d 1389 (D.C. Cir. 1996).

§ 16-2352. Definitions.

(a) As used in this subchapter, unless the context otherwise requires:

(1) "parent and child relationship" includes all rights, powers, privileges, immunities, duties and obligations existing under law between a parent and child, including rights of inheritance. The words apply equally to every child and every parent regardless of the marital status of the parents of the child.

(2) "termination of the parent and child relationship" means the adjudication that a child is free from the custody and control of either or both of his or her living parents by means of a court order that completely severs and extinguishes the parent and child relationship.

(b) The terms found in this subchapter which are defined in section 16-2301 of this chapter shall be given the same definition herein. (1973 Ed., § 16-2352; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Definitions applicable. — See note to § 16-2351.

Cited in *In re A.S. & J.S.*, 118 WLR 2221 (Super. Ct. 1990).

§ 16-2353. Grounds for termination of parent and child relationship.

(a) A judge may enter an order for the termination of the parent and child relationship when the judge finds from the evidence presented, after giving

due consideration to the interests of all parties, that the termination is in the best interests of the child.

(b) In determining whether it is in the child's best interests that the parent and child relationship be terminated, a judge shall consider each of the following factors:

(1) the child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;

(3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;

(3A) the child was left by his or her parent, guardian, or custodian in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

(4) to the extent feasible, the child's opinion of his or her own best interests in the matter; and

(5) evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Code, sec. 6-2101 *et seq.*). Evidence of continued drug-activity shall be given great weight. (1973 Ed., § 16-2353; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 4(b), (c), 37 DCR 50; June 8, 1990, D.C. Law 8-134, § 2(d), 37 DCR 2613.)

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 8-87. — See note to § 16-2301.

Legislative history of Law 8-134. — See note to § 16-2301.

Constitutionality. — Insofar as a child's relationships with persons other than the natural parent are important in determining whether termination is required, and if so, what its effects might be, statutory consideration of such relationships is not a violation of the due process clause of the Fifth Amendment. In re C.O.W., App. D.C., 519 A.2d 711 (1987).

Constitutional rights of parents. — Natural parents' constitutional rights are relevant only to the question of what process is due in a termination proceeding, and such a proceeding requires no balancing of the parents' interests against those of the child. In re A.B.E., App. D.C., 564 A.2d 751 (1989).

While the rights of the natural parents to bring up their children are subject to the protection of the Due Process and Equal Protection Clauses of the Fourteenth Amendment, these rights are not absolute, and must give way before the child's best interests. In re A.B.E., App. D.C., 564 A.2d 751 (1989).

Relevancy of parent's interests. — Trial court was not obliged to consider natural mother's interests in isolation from the interest of the child; the parent's interests are relevant only to the question of what process is due and the trial court need not balance the parent's interests against those of the child in deciding whether to terminate the parent-child relationship. In re M.M.M., App. D.C., 485 A.2d 180 (1984).

Rights of putative father. — To assume that a putative father has an opportunity to assert his rights, under certain circumstances,

he is entitled to due notice of the proceedings. In re T.M., App. D.C., 665 A.2d 207 (1995).

In a termination of parental rights proceeding, the trial court has the authority to resolve finally any claimed putative father's right to assert paternity in a subsequent proceeding provided he has been served properly with notice and has been afforded an opportunity to be heard on the issue. In re T.M., App. D.C., 665 A.2d 207 (1995).

Superior Court may terminate the parent-child relationship of a putative father in a termination of parental rights proceeding where the father has been given notice of the pending and past proceedings and has been represented by counsel at all stages in the neglect and termination proceedings, where the child has been adjudicated a neglected child during the neglect phase of said proceedings, but the father has not been formally found to have neglected his child, or been found unfit to care for his child, during the neglect proceedings. In re Gary H., 115 WLR 1201 (Super. Ct. 1987).

Court's responsibility to consider all factors. — The judge's responsibility is to consider the evidence in the record with respect to all of the statutory criteria in this section, balance all of the relevant considerations, and choose between available alternatives, all of which may be less than perfect, while keeping in mind the paramount goal of protecting and promoting the best interests of the child. In re A.R., App. D.C., 679 A.2d 470 (1996).

Court's discretion in applying statutory factors. — A trial judge has wide latitude in applying the statutory criteria set forth in subsection (b) of this section. In re A.R., App. D.C., 679 A.2d 470 (1996).

While the trial court does have considerable discretion in applying the statutory factors in subsection (b), the court is not free to change the statute. In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991).

The District's parental termination statute requires the trial judge to consider several factors in deciding whether to terminate parental rights; as a general proposition, trial judges have considerable discretion in applying the statutory factors. In re I.B., App. D.C., 631 A.2d 1225 (1993).

Best interest of the child controlling. — The legal touchstone in any proceeding to terminate parental rights is the best interest of the child, and that interest is controlling. In re A.B.E., App. D.C., 564 A.2d 751 (1989); In re T.W., App. D.C., 623 A.2d 116 (1993).

In a contested adoption, the § 16-309(b)(3) standard necessarily encompasses an inquiry into whether termination of the relationship between the child and the natural parents is in the best interest of the child — an inquiry properly guided by the standards set out in

subsection (b). In re D.R.M., App. D.C., 570 A.2d 796 (1990).

The most obvious, and possibly the only, basis for denying custody to a fit parent in the best interest of the child would be a finding based on clear and convincing evidence that parental custody would actually harm the child. In re H.R., App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

This section must be construed to incorporate a parental preference in determining the best interests of the child when an unwed, noncustodial father is fit and has not abandoned his opportunity interest. In re H.R., App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

The trial court's conclusions that child's best interest required termination of parental rights to assure his timely integration into a permanent home, and his continued physical, mental and emotional well-being, was supported by clear and convincing evidence, where the father had no interaction with the child for four years, foster parents had met all the child's needs, and father failed to participate in the termination proceedings. *Johnson v. United States*, App. D.C., 597 A.2d 917 (1991).

A parent's health or fitness in the abstract will not in itself determine whether termination is in the child's best interest; rather, the focus must be on how well the parent, despite significant problems, can meet the particular needs of the child. In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991).

Application of the best interest of the child standard in a particular case presents one of the heaviest burdens that can be placed on a trial judge; in reviewing this difficult decision, the appellate court will reverse only for an abuse of discretion. In re Baby Boy C., App. D.C., 630 A.2d 670 (1993), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

If a judge finds by clear and convincing evidence, after considering the statutory factors, that termination of parental rights is in the best interests of the child, he or she may enter a termination of parental rights order. In re I.B., App. D.C., 631 A.2d 1225 (1993).

Indecent liberties conviction. — Father's indecent liberties conviction with another of his children should have been treated as an important factor in determining whether reunification of child with the father was a plausible goal. In re L.L., App. D.C., 653 A.2d 873 (1995).

Child's perceived best interests. — Although subdivision (b)(4) requires the judge, in deciding whether the best interests of the child demand termination, to consider "to the extent feasible, the child's opinion of his or her own best interests in the matter," the statute does not say the judge must derive this opinion even partly from questioning of the child herself

when "feasible," i.e., when the child is old enough (and otherwise competent) to voice such an opinion. In re T.W., App. D.C., 623 A.2d 116 (1993).

Although a child's answers to the court about what disposition she thought best for her might have provided key information relevant to her perceived best interests, the trial judge did not abuse his discretion in refusing to let a 12-year-old child be questioned concerning her preference in a parental termination case, in a case where the child's prior conduct and statements pointed in more than one direction. In re T.W., App. D.C., 623 A.2d 116 (1993).

Burden of proof. — The burden is on the moving party to show that the termination of paternal rights would be in the best interest of the child. In re A.B.E., App. D.C., 564 A.2d 751 (1989).

Where the natural mother of the minor child was unable to care for him personally by reason of her mental condition, nevertheless had the capacity to designate a suitable and willing custodian and has done so, before rejecting the designated custodian's petition and severing the child's relation with his relatives in the context of a consolidated adoption proceeding, the trial court was to find by clear and convincing evidence both that the custody arrangement chosen by the mother would clearly not be in the best interest of the child and that the parent's consent to adoption was withheld contrary to the child's best interest. In re T.J., App. D.C., 666 A.2d 1 (1995), reh'g denied, App. D.C., 675 A.2d 30 (1995), cert. denied, — U.S. —, 116 S. Ct. 2571, 135 L. Ed. 2d 1087 (1996).

"Home environment." — Definition of "home environment" under subdivision (b)(5) cannot turn on a distinction between mothers who take their babies home from the hospital and those who do not. Rather, "home environment" means, fundamentally, the home base where a biological parent and her child presumptively will reside, subject to temporary dislocations, until that base is severed by a termination of parental rights. In re D.R., App. D.C., 673 A.2d 1259 (1996).

Absent clear legislative indication to the contrary, there is no discernible sound basis for concluding that any particular period of time, short of a decision to terminate parental rights, would be enough time to deem the natural mother no longer a part of the child's "home environment" for purposes of subdivision (b)(5), whether the child is living in the hospital or in foster care. In re D.R., App. D.C., 673 A.2d 1259 (1996).

Order granting adoption not an independent finding of termination of parental rights. — An order granting an adoption did not constitute a separate and independent finding that the parental rights of the natural

parents were terminated pursuant to this section. In re J.A., 119 WLR 941 (Super. Ct. 1991).

Where parents withdrew their appeal from an order granting an adoption to another couple so that the matter could be returned to the Trial Court for withdrawal of the adoption petition and the adjudication of a new motion for termination of parental rights the Court would not hold that the order granting the adoption independently terminated the A's parental rights because the A's would have lost their rights to appeal from the order. In re J.A., 119 WLR 941 (Super. Ct. 1991).

The Court refused to declare an adoption decree an independent order terminating parental rights where the couple no longer wished to adopt, and such a change in circumstances required a full hearing to decide on terminating parental rights. In re J.A., 119 WLR 941 (Super. Ct. 1991).

Finding of unfitness not required for termination of custody. — Finding of parental unfitness is not required by the due process clause of the Fifth Amendment as a prerequisite for a termination order of natural parent who no longer has custody. In re K.A., App. D.C., 484 A.2d 992 (1984).

Merits of termination proceeding in relation to grandparent-child relationship. — Trial court was in error, when, in effect, it substituted the grandparents for their teenage daughter, and considered the merits of the parental termination proceeding as it related to the grandparent-child relationship, not to the mother-child relationship. Nothing in the statute or in its legislative history permits the court to conceptualize a termination proceeding by substituting the grandparents for a parent, even if the parent herself is a juvenile. In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991).

The trial court erred in withholding termination, in part, on the assumption that grandparents' rights would be impermissibly affected. In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991).

Consideration of all pending termination and adoption issues in the same proceeding. — Unless convincing reasons for separate proceedings are offered, all termination and adoption issues should be considered by 1 judge in the same proceeding, where all interested parties are present and can be subject to scrutiny at the same time, subject to sequencing of issues and related evidence in the court's sound discretion. In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991).

Court erred in making the parental termination decision itself substantially by reference to how termination would affect a concurrent contested adoption proceeding, but without considering all the relevant adoption issues through a consolidated termination/adoption proceeding.

In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991).

A termination court is not without authority to terminate parental rights even though a separate adoption proceeding as to the same child may be pending. In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991).

Testimony of children involved in proceeding. — Although it is preferable for judges to hear directly from the children involved in parental termination proceedings, in light of the entire record it was determined that the trial judge did not err in failing to take such testimony. In re I.B., App. D.C., 631 A.2d 1225 (1993).

Judge did not violate the termination of parental rights statute by declining either to interview the child to determine the child's opinion of his own best interest, or to attempt to expand in some way the evidentiary record presented to her by the parties. In re A.R., App. D.C., 679 A.2d 470 (1996).

The trial judge did not abuse her discretion when she refused to conduct an in camera interview of a six-year-old child because of the risk of psychological harm which she apprehended the child might suffer as a result of the interview; she explained that, in her view, such an interview would place undue pressure on the child and would risk the infliction of significant emotional harm, and that she lacked the necessary training and skills to conduct such an interview without imperilling the child's psychological well-being. In re A.R., App. D.C., 679 A.2d 470 (1996).

Lack of bonding with parents. — Lack of bonding between parents and child was significant, but could not support termination, where there had been no bonding with any prospective substitute parent. In re A.S.C., App. D.C., 671 A.2d 942 (1996).

Testimony of social workers. — Trial court has discretion to elicit testimony from Department of Human Services officials about the practical plans and realistic expectations for adoptive placement of a particular child. In re A.W., App. D.C., 569 A.2d 168 (1990).

Guardian ad litem may initiate action. — Section 16-2354(a) specifically authorizes the guardian ad litem, as legal representative for the child, to file a proceeding to terminate parental rights. In re L.H., App. D.C., 634 A.2d 1230 (1993); In re P.D., App. D.C., 664 A.2d 337 (1995).

Termination of parental rights not justified. — The drastic step of termination of parental rights was not supportable under clear and convincing standard of review where child fell low on scale of adoptability and termination of parental rights would increase only slightly child's chances for adoption. In re A.S.C., App. D.C., 671 A.2d 942 (1996).

Despite infrequency of parents' visits, there

was evidence that both parents visited the child and talked about her to hospital staff and social workers and that they consistently expressed their interest in having custody of the child. In re A.S.C., App. D.C., 671 A.2d 942 (1996).

There appeared to be no substantial good to be achieved for child by termination of parental rights at time when the parents had been in drug treatment for some time, had a home, had availed themselves of social services in their home state, had started special training needed for child's care, and had expressed their desire to have their child with them. In re A.S.C., App. D.C., 671 A.2d 942 (1996).

Recusal of judge. — Where, in a termination of parental rights case, the natural father asserted on appeal that the trial judge manifested bias and prejudice in her conduct of the trial, but where the father made no request in the trial court that the judge recuse herself, that fact alone was sufficient to warrant rejection of father's claim. In re Baby Boy C., App. D.C., 630 A.2d 670 (1993), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

Standard of review. — The court of appeals may reverse a trial court's determination of where the best interests of the child lie only when the judge has abused his discretion. In re T.W., App. D.C., 623 A.2d 116 (1993).

Evidence sufficient to support termination. — In re K.J.L., App. D.C., 434 A.2d 1004 (1981); In re K.A., App. D.C., 484 A.2d 992 (1984); In re U.S.W., App. D.C., 541 A.2d 625 (1988); In re F.H., 118 WLR 2725 (Super. Ct. 1990); United States v. Rogers, 118 WLR 2725 (Super. Ct. 1990); E.C. v. District of Columbia, App. D.C., 589 A.2d 1245 (1991); In re T.W., App. D.C., 623 A.2d 116 (1993).

A convicted child molester with a criminal background, homicidal ideation, and a record of threatening conduct is not "fit" in the ordinary everyday sense of that word. Judge's implicit conclusion that eventual reunification with the father would be in child's best interest was erroneous. In re L.L., App. D.C., 653 A.2d 873 (1995).

Where trial court expressly found that child was very suitable for adoption in view of his age and health characteristics, no more was required given unassailable finding that the mother would not be a fit guardian in the near future, and Department of Human Services need not substantiate in every case, by reference to past or current experience, the realistic prospects for adoption that termination would advance. In re A.W., App. D.C., 569 A.2d 168 (1990); E.C. v. District of Columbia, 119 WLR 1033 (Ct. App. 1991).

Fact that no prospective adoptive parents had been identified for child did not bar termination of parental rights. In re A.W., App. D.C., 569 A.2d 168 (1990); E.C. v. District of Columbia, 119 WLR 1033 (Ct. App. 1991).

Termination of mother's parental rights was in the child's best interest. *In re T.M.*, App. D.C., 665 A.2d 950 (1995).

Evidence insufficient to support termination. — In the absence of any substantial good to be achieved for the child by the termination of his relationship with his natural parents, the affirmative step of terminating that relationship was unsupported. *In re A.B.E.*, App. D.C., 564 A.2d 751 (1989).

Cited in *In re T.L.M.*, 114 WLR 1553 (Super. Ct. 1986); *In re D.G.*, App. D.C., 583 A.2d 160 (1990); *S.S. v. D.M.*, App. D.C., 597 A.2d 870 (1991); *In re L.W.*, App. D.C., 613 A.2d 350 (1992); *In re T.B.*, 120 WLR 1089 (Super. Ct. 1992); *In re Baby Boy C.*, 120 WLR 1309 (Super. Ct. 1992).

§ 16-2354. Motions.

(a) A motion for the termination of the parent and child relationship may be filed by the District of Columbia government or by the child through his or her legal representative.

(b) A motion for the termination of the parent and child relationship may be filed only when the child who is the subject of the motion has been adjudicated neglected at least six (6) months prior to the filing of the motion and the child is in the court-ordered custody of a department, agency, institution or person other than the parent; except that the motion for termination may be filed immediately —

(1) upon an adjudication that the child was abandoned; or

(2) when, despite reasonable efforts, the parent could not be located for the factfinding hearing and during the three (3) months prior to the hearing.

(c) A motion for the termination of the parent and child relationship shall include but not be limited to:

(1) the name, sex, date and place of birth, and current placement of the child;

(2) the name and title of the petitioner;

(3) the name and address of the child's parent;

(4) a plain and concise statement of the facts and opinions on which the termination of the parent and child relationship is sought;

(5) a specification as to the health of the child;

(6) a statement as to the general prospects for or the barriers, if any, to the adoption of the child; and

(7) a statement as to the various efforts taken by the moving party to locate the parent of the child.

(d) When any facts required pursuant to subsection (c) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, for good cause shown, the judge may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations contained in the motion for the termination of the parent and child relationship. (1973 Ed., § 16-2354; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Cross references. — As to compensation of attorneys in neglect and termination of parental rights proceedings, see § 16-2326.1.

Legislative history of Law 2-22. — See note to § 16-2301.

"Legal representative." — The "legal rep-

resentative" referred to in subsection (a) includes a court-appointed guardian ad litem. *In re L.H.*, App. D.C., 634 A.2d 1230 (1993).

Due process not violated by role of private guardian ad litem. — Due process does not require that a termination of parental

rights proceeding be initiated and prosecuted by a government attorney. In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

Parties who may file petitions. — A termination hearing is held in response to a motion by a child (through counsel), or by the District of Columbia, to terminate the parental rights of the child's parents, guardians, or custodians. LaShawn A. ex rel. Moore v. Kelly, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994).

Federal court properly heard claim for injunctive relief. — Where there was no pending judicial proceeding in the District of Columbia which could have served as an adequate forum for a class of children in foster care under the supervision of the D.C. Department of Human Services to present its multifaceted request for broad-based injunctive relief based on the Constitution and on federal and local statutory law, the federal district court properly refused to abstain the case. LaShawn A. ex rel. Moore v. Kelly, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994).

Jurisdiction. — The Court had jurisdiction over motion to terminate the parent and child relationship where such motion was filed while the child was in agency custody, even though the hearing on such motion took place after the custody order had expired and custody had not been formally extended. In re B.J.R., 113 WLR 861 (Super. Ct. 1985).

Scope of termination hearing. — A termination hearing is manifestly not intended to address subjects other than the cessation of parental rights. LaShawn A. ex rel. Moore v. Kelly, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994).

Role of private guardian ad litem in termination of parental rights proceedings ratified. — The filing of motions to terminate parental rights, and the prosecution thereof, by a private attorney acting as guardian ad litem, without the assistance and participation of the Corporation Counsel, or by one or more of its assistant Corporation Counsels, was in accord with the statutory provisions, and the Department of Human Services, was in substance, a party to the proceeding. In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

Council's action in approving the increase in compensation level to \$1,000 for termination of parental rights proceedings was a ratification of the role that guardians ad litem perform in termination of parental rights proceedings. In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

Cited in In re K.J.L., App. D.C., 434 A.2d 1004 (1981); In re Gary H., 115 WLR 1201 (Super. Ct. 1987); In re D.B., 117 WLR 665 (Super. Ct. 1989); In re O.L., 117 WLR 1329 (Super. Ct. 1989); In re A.W., App. D.C., 569 A.2d 168 (1990); Johnson v. United States, App. D.C., 597 A.2d 917 (1991).

§ 16-2355. Consideration of termination of the parent and child relationship at review hearings.

(a) After a child adjudicated neglected by the Division pursuant to this chapter has been committed by the Division to the custody of a department, agency or institution for more than eighteen (18) months and no hearing on a motion for the termination of the parent and child relationship has been held within the preceding twelve (12) months, the Division shall, at a review hearing, determine why a motion to terminate the parent and child relationship has not been filed.

(b) For each child who remains in custody for three (3) years or more, the Division shall, at each annual review hearing, determine why a motion to terminate the parent and child relationships has not been filed. (1973 Ed., § 16-2355; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Cited in In re Gary H., 115 WLR 1201

(Super. Ct. 1987); In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990); In re T.B., 120 WLR 1089 (Super. Ct. 1992).

§ 16-2356. Parties.

Parties to a proceeding for the termination of the parent and child relationship shall be the child, the parent of the named child, and the agency having the legal custody of the child. The judge may at his or her discretion, name on his or her own motion or in response to a motion for joinder or intervention, join additional parties to a proceeding to terminate the parent and child relationship. (1973 Ed., § 16-2356; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Department of Human Services as a party. — Although the District of Columbia Department of Human Services was a party to the terminate parental rights proceedings, this did not prevent the agency, through its attor-

ney, from waiving its presence at the hearing on the motion. In re L.H., App. D.C., 634 A.2d 1230 (1993).

Cited in In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990); In re Baby Girl D.S., App. D.C., 600 A.2d 71 (1991).

§ 16-2357. Notice.

(a) When a motion to terminate the parent and child relationship is filed, a judge shall promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.

(b) A judge shall direct the issuance to and personal service upon the child's parent of a summons together with a copy of the motion to terminate the parent and child relationship.

(c) When it is appropriate to the proper disposition of the case, a judge may direct the service of a summons upon other persons.

(d) If a personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia. (1973 Ed., § 16-2357; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Change of trial date. — This section does not require that a new summons be served if there is a change in the trial date; rather, pursuant to subsection (a), the trial court must ensure that the parties have notice of the time of the hearing. In re P.D., App. D.C., 664 A.2d 337 (1995).

Alternative methods of service. — The

trial court is given considerable leeway in choosing an alternative method of service, when necessary, under this section and Superior Court Neglect Rule 14(a)(1) (now see Rules 7 and 8). In re E.S.N., App. D.C., 446 A.2d 16 (1982).

Cited in In re Gary H., 115 WLR 1201 (Super. Ct. 1987); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 16-2358. Conduct of hearings.

(a) All hearings and proceedings on a motion to terminate the parent and child relationship shall be held by the judge, without a jury.

(b) All hearings and proceedings held pursuant to this subchapter shall be recorded by appropriate means.

(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings and proceedings arising pursuant to this subchapter. Only persons necessary to such hearings and proceedings

shall be admitted, but a judge may, pursuant to rules of the Superior Court of the District of Columbia, admit such other persons as have a proper interest in the case or the work of the Division on the condition that they refrain from divulging information identifying the child involved in the proceedings or members of his or her family.

(d) If a judge finds it is in the best interests of the child, he or she may temporarily exclude the child from any proceeding. Under no circumstances, however, may counsel in the case be excluded. (1973 Ed., § 16-2358; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

§ 16-2359. Adjudicatory hearing.

(a) A judge shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If the parent has been given proper notice but has failed to appear the judge may proceed in his or her absence.

(b) A judge shall hear evidence presented by the moving party and the burden of proof shall rest upon the moving party.

(c) Every party shall have the right to present evidence, to be heard in his or her own behalf and to cross-examine witnesses called by another party.

(d) All evidence which is relevant, material, and competent to the issues before the judge shall be admitted.

(e) Notwithstanding the provisions of D.C. Code, sections 14-306 and 14-307, neither the husband/wife privilege nor the physician/client or mental health professional/client privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter.

(f) A judge may enter an order permanently terminating the parent and child relationship after considering all of the evidence presented and after making a determination based upon clear and convincing evidence that termination of the parent and child relationship is in the best interest of the child. If a judge does not find that sufficient grounds exist for termination, the motion for termination of the parent and child relationship may be dismissed. (1973 Ed., § 16-2359; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; Mar. 3, 1979, D.C. Law 2-136, § 805(d), 25 DCR 5055; Sept. 6, 1980, D.C. Law 3-85, § 4, 27 DCR 2900.)

Legislative history of Law 2-22. — See note to § 16-2301.

Legislative history of Law 2-136. — Law 2-136, the "District of Columbia Mental Health Information Act of 1978," was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, second amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978, and October 3, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned

Act No. 2-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-85. — Law 3-85, the "Enacted Titles Numbering and Amendment Act of 1980," was introduced in Council and assigned Bill No. 3-296, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 20, 1980, and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-202 and transmitted to both Houses of Congress for its review.

Proper notice given. — Trial court correctly found that proper notice had been given to the parents by personal service where the mother's attorney had requested the change, and he was also present at all the proceedings. In re P.D., App. D.C., 664 A.2d 337 (1995).

Testimony of Department of Human Services officials. — The trial court has discretion to elicit testimony from Department of Human Services officials about the practical plans and realistic expectations for adoptive placement of a particular child. In re A.W., App. D.C., 569 A.2d 168 (1990).

"Clear and convincing evidence." — "Clear and convincing evidence," as used in subsection (f), is most easily defined as the evidentiary standard that lies somewhere between a preponderance of evidence and evidence probative beyond a reasonable doubt. In re K.A., App. D.C., 484 A.2d 992 (1984).

Clear and convincing evidence is that which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. In re M.M.M., App. D.C., 485 A.2d 180 (1984).

Admissible evidence. — Section 16-2315(e)(1) is a limited provision designed to secure a thorough examination of a custodian whose mental capacity is the subject of a neglect petition. Subsection (e) of this section is a much broader provision sweeping aside the husband-wife privilege and the doctor-patient privilege as regards any evidence which may be offered in the course of a termination hearing regardless of whether it was obtained through

a § 16-2315(e)(1) examination or otherwise and regardless of whether it concerns the child's custodian or other involved persons. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

Burden of proof. — A moving party must demonstrate by clear and convincing evidence that termination of the parent and child relationship is in the best interest of the child. In re A.R., App. D.C., 679 A.2d 470 (1996).

Evidence sufficient to support termination. — Where trial court expressly found that child was very suitable for adoption in view of his age and health characteristics, no more was required given the unassailable finding that the mother would not be a fit guardian in the near future, and Department of Human Services need not substantiate in every case, by reference to past or current experience, the realistic prospects for adoption that termination will advance. In re A.W., App. D.C., 569 A.2d 168 (1990).

Fact that no prospective adoptive parents had been identified for child did not bar termination of parental rights. In re A.W., App. D.C., 569 A.2d 168 (1990).

Cited in In re K.J.L., App. D.C., 434 A.2d 1004 (1981); In re Gary H., 115 WLR 1201 (Super. Ct. 1987); In re D.H., 117 WLR 2109 (Super. Ct. 1989); In re H.R., App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994); Johnson v. United States, App. D.C., 616 A.2d 1216 (1992), cert. denied, 507 U.S. 996, 113 S. Ct. 1611, 123 L. Ed. 2d 172 (1993); In re I.B., App. D.C., 631 A.2d 1225 (1993).

§ 16-2360. Disposition after termination.

(a) If a judge finds that sufficient grounds exist for the termination of the parent and child relationship, the judge shall so order and decree and shall vest the legal custody of the child in a department, agency or institution.

(b) The department, agency or institution to which a child is committed after the termination of the parent and child relationship pursuant to this subchapter shall be responsible for seeking the prompt adoptive placement of the child and, if an adoptive placement has not been made within three (3) months, the department, agency, or institution shall list the child on all appropriate local, regional and national adoption exchanges. If an adoptive placement has not been made within six (6) months of the termination, a hearing shall be held and within every six (6) months thereafter the department, agency or institution shall report to the Division on its efforts to secure an adoptive placement, including but not limited to the following information:

(1) the extent to which an adoption has been explored with the child's foster parent and any reasons why an adoption by the foster parent is not appropriate;

(2) all adoption exchanges with which the child has been listed and the date of each listing; and

(3) the limitations placed on the families to be considered for the adoption of the child.

(c) The information provided pursuant to subsection (b) shall be provided to the guardian ad litem at least ten (10) days prior to a review hearing.

(d) A notice of a review hearing shall be given as prescribed by rules of the Superior Court of the District of Columbia to the child's guardian ad litem. Any person with whom the child has been living for six (6) months or more shall be given notice of hearings and shall upon his or her request be joined as a party to a review hearing.

(e) If the Division finds that the department, agency or institution vested with the custody of the child is not making sufficient efforts to secure an adoptive placement for the child or that inappropriate limitations have been placed on potential adoptive families, the Division may order such additional efforts as it deems appropriate or may order that the imposition of inappropriate limitations be eliminated or may transfer the power to consent to an adoption together with the vestment of legal custody to any other licensed child placement agency. (1973 Ed., § 16-2360; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Applicability. — This subchapter expressly limits the effects of a termination decree to the parent specified. *In re Baby Girl D.S.*, App. D.C., 600 A.2d 71 (1991).

Grandparent's rights. — On its face, this subchapter has no effect on whatever legal rights grandparents may have in a child's fu-

ture. *In re Baby Girl D.S.*, App. D.C., 600 A.2d 71 (1991).

Cited in *In re A.W.*, App. D.C., 569 A.2d 168 (1990); *In re A.S. & J.S.*, 118 WLR 2221 (Super. Ct. 1990); *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994).

§ 16-2361. Effect of termination decree.

(a) An order terminating the parent and child relationship divests the parent and the child of all legal rights, powers, privileges, immunities, duties and obligations with respect to each other, except the right of the child to inherit from his or her parent. The right of inheritance of the child shall be terminated only by a final order of adoption.

(b) When an order terminating the parent and child relationship has been issued, the parent whose right has been terminated shall not thereafter be entitled to notice of proceedings for the adoption of the child by another nor shall such parent have any right to object to the adoption or otherwise to participate in the proceedings. (1973 Ed., § 16-2361; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

§ 16-2362. Decrees.

(a) Every order of the Division terminating the parent and child relationship shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

(b) Notwithstanding the provisions of D.C. Code, section 16-2329 as renumbered by the Prevention of Child Abuse and Neglect Act of 1977 [§ 16-2330], all orders terminating the parent and child relationship entered pursuant to this subchapter shall not be final and effective until the time for noting an appeal has expired and, if a notice of appeal has been entered, the order shall not become effective until the date of the final disposition of the appeal. (1973 Ed., § 16-2362; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

References in text. — The Prevention of Child Abuse and Neglect Act of 1977, referred to in subsection (b) of this section, is the Act of September 23, 1977, D.C. Law 2-22 which is codified as §§ 2-1351 et seq., 6-2101 et seq., and 16-2301 et seq.

“Section 16-2329 as renumbered by the Prevention of Child Abuse and Neglect Act of 1977”, which is referred to in subsection (b) of this section, is a reference to present § 16-2330.

§ 16-2363. Confidentiality of records.

The provisions of sections 16-2331 and 16-2332 of this chapter, as renumbered by the Prevention of Child Abuse and Neglect Act of 1977 [§§ 16-2332 and 16-2333, respectively], shall apply to all juvenile case records and juvenile social records as defined therein which are created pursuant to the proceedings under this subchapter. (1973 Ed., § 16-2363; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Section references. — This section is referred to in § 16-2364.

Legislative history of Law 2-22. — See note to § 16-2301.

References in text. — The Prevention of Child Abuse and Neglect Act of 1977, referred to in this section, is the Act of September 23,

1977, D.C. Law 2-22 which is codified as §§ 2-1351 et seq., 6-2101 et seq., and 16-2301 et seq..

“Sections 16-2331 and 16-2332 of this chapter, as renumbered by the Prevention of Child Abuse and Neglect Act of 1977”, which are referred to in this section, are references to present §§ 16-2332 and 16-2333, respectively.

§ 16-2364. Unlawful disclosure.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2363 of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than two hundred and fifty dollars (\$250) or imprisoned for not more than ninety (90) days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia. (1973 Ed., § 16-2364; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

§ 16-2365. Termination decrees of other jurisdictions.

If the parent and child relationship has been terminated by judicial decree in another jurisdiction that decree, unless it is against the public policy of the District of Columbia, shall have the same force and effect in the District of

Columbia as to matters within the jurisdiction of the District of Columbia court. (1973 Ed., § 16-2365; Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 16-2301.

Subchapter IV. Court-Appointed Special Advocates.

§ 16-2371. Definitions.

For the purpose of this subchapter, the term “advocate” means a court-appointed special advocate and the term “program” means the court-appointed special advocate program established under this subchapter. (Mar. 16, 1995, D.C. Law 10-228, § 2(b), 42 DCR 7.)

Legislative history of Law 10-228. — Law 10-228, the “Court-Appointed Special Advocate Program Act of 1994,” was introduced in Council and assigned Bill No. 10-326, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings

on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-369 and transmitted to both Houses of Congress for its review. D.C. Law 10-228 became effective on March 16, 1995.

§ 16-2372. Court-appointed special advocate program.

(a) There is established a court-appointed special advocate program to provide trained volunteers whose primary purpose is to ensure that children who are the subject of certain family division proceedings of the Superior Court of the District of Columbia are provided with appropriate service and case planning that is in their best interest.

(b) The court, in any appropriate action, may appoint an individual provided by the court-appointed special advocate program.

(c) The program shall be administered by the Family Division of the Superior Court of the District of Columbia.

(d) The Family Division shall report annually to the Chief Judge of the Superior Court of the District of Columbia, who shall report to the Council of the District of Columbia regarding the operation of the program.

(e) The Board of Judges of the Superior Court of the District of Columbia may adopt rules governing the implementation and operation of the program, including, but not limited to, training, selection, and supervision of volunteers.

(f) An advocate or a member of the administrative staff of the program is not liable for acts or omissions in providing services or performing duties on behalf of the program, unless the act or omission constitutes reckless, willful, or wanton misconduct or intentionally tortious conduct.

(g) A court-appointed special advocate shall have access to and the use of the court record in a proceeding in which the advocate has been appointed. (Mar. 16, 1995, D.C. Law 10-228, § 2(b), 42 DCR 7.)

Legislative history of Law 10-228. — See note to § 16-2371.

CHAPTER 25. CHANGE OF NAME.

Sec.

16-2501. Application; persons who may file.

16-2502. Notice; contents.

16-2503. Decree.

§ 16-2501. Application; persons who may file.

Whoever, being a resident of the District and desiring a change of name, may file an application in the Superior Court setting forth the reasons therefor and also the name desired to be assumed. If the applicant is an infant, the application shall be filed by his parent, guardian, or next friend. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(i); 1973 Ed., § 16-2501.)

Cross references. — As to civil jurisdiction of Superior Court, see § 11-921.

As to change of name upon adoption, see § 16-312.

Separate action not required where change of name on divorce. — Section 16-915 recognizes the common-law right of a mar-

ried woman to change her name back to her maiden or previously used name and provides a mechanism by which the woman may exercise her right at the time of divorce and record the name change without filing a separate action under this chapter. *Brown v. Brown*, App. D.C., 384 A.2d 632 (1977).

§ 16-2502. Notice; contents.

Prior to a hearing pursuant to this chapter, notice of the filing of the application, containing the substance and prayer thereof, shall be published once a week for three consecutive weeks in a newspaper in general circulation published in the District. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1; 1973 Ed., § 16-2502.)

Section references. — This section is referred to in § 16-2503.

No right for taxpayers to bear costs of publication. — The right to change one's name is not so fundamental that it carries with

it any derivative right to have the taxpayers pay for its exercise if applicant cannot afford costs of publication. In *re Holmes*, 112 WLR 277 (Super. Ct. 1984).

§ 16-2503. Decree.

On proof of the notice prescribed by section 16-2502, and upon a showing that the court deems satisfactory, the court may change the name of the applicant according to the prayer of the application. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1; 1973 Ed., § 16-2503.)

CHAPTER 27. NEGLIGENCE CAUSING DEATH.

Sec.

16-2701. Liability; damages; prior recovery as precluding action.

Sec.

16-2702. Party plaintiff; statute of limitations.
16-2703. Distribution of damages.**§ 16-2701. Liability; damages; prior recovery as precluding action.**

When, by an injury done or happening within the limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is married, entitle the spouse, either separately or by joining with the injured person, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse and the next of kin of the deceased person; and shall include the reasonable expenses of last illness and burial. Where there is a surviving spouse, the jury shall allocate the portion of its verdict payable to the spouse and next of kin, respectively, according to the finding of damage to the spouse and next of kin. If, in a particular case, the verdict is deemed excessive the trial judge or the appellate court, on appeal of the cause, may order a reduction of the verdict. An action may not be maintained pursuant to this chapter if the party injured by the wrongful act, neglect, or default has recovered damages therefor during his life. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(j); 1973 Ed., § 16-2701; Oct. 1, 1976, D.C. Law 1-87, § 21, 23 DCR 2544.)

I. In General.

II. Damages.

III. Specific Actions.

I. IN GENERAL.

Cross references. — As to abatement and revivor, see § 12-101 et seq.

As to workers' compensation, see § 36-501 et seq.

As to liability of common carrier for injury to employee, see § 44-401 et seq.

Legislative history of Law 1-87. — See note to § 16-2341.

Right created. — This chapter creates a new right of action. *Wharton v. Jones*, 285 F. Supp. 634 (D.D.C. 1968).

The Wrongful Death Act creates an entirely new right of action in favor of designated beneficiaries providing a remedy for close relatives to the deceased, who might naturally have expected maintenance or assistance from the

deceased had he lived, with proper recovery based on the pecuniary benefits that the statutory beneficiaries might reasonably be expected to have derived from the deceased had he lived. *Bonan v. Washington Hosp. Ctr.*, 119 WLR 1685 (Super. Ct. 1991).

The cause of action the Wrongful Death Act creates is not derivative but, rather, is a new and independent cause of action which is not constrained by any temporal limits on the enforceability by the decedent himself of his own rights respecting the same injury at the time of his death. *Nelson v. American Nat'l Red Cross*, 815 F. Supp. 501 (D.D.C. 1993), modified on other grounds, 26 F.3d 193 (D.C. Cir. 1994).

Construction. — A right of action exists in the District of Columbia for the wrongful death

of another only through the "grace of legislative enactment"; and the statutory scheme must therefore be strictly construed. *Richardson v. District of Columbia*, 116 WLR 2609 (Super. Ct. 1988).

Purpose. — This action is designed to provide a remedy whereby close relatives of a deceased, who might naturally have expected maintenance or assistance from the deceased had he lived, may recover compensation from the wrongdoer commensurate with their pecuniary loss. *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922 (D.C. Cir. 1978); *Cole, Raywid & Braverman v. Quadrangle Dev. Corp.*, App. D.C., 444 A.2d 969 (1982).

The Wrongful Death Act was enacted by the legislature to protect interests of persons other than the victim in his own vitality, specifically, the interests of his spouse and next-of-kin who have also, by reason of his death, sustained a loss the law regards as compensable. *Nelson v. American Nat'l Red Cross*, 815 F. Supp. 501 (D.D.C. 1993), modified on other grounds, 26 F.3d 193 (D.C. Cir. 1994).

Applicability. — This chapter is controlling as to the negligence law to be applied to an action brought in the District of Columbia under the Federal Tort Claims Act. *Dutcher v. United States*, 736 F. Supp. 1142 (D.D.C.), *aff'd*, 923 F.2d 200 (D.C. Cir. 1990).

Injury causing death must have occurred in the District. — This section, by its terms, creates a cause of action only for deaths caused by injuries occurring within the District of Columbia. *Perry v. Criss Bros. Iron Works*, 741 F. Supp. 985 (D.D.C. 1990).

Action for sole benefit of spouse and next of kin. — An action for wrongful death is to be pursued for the sole benefit of "the spouse and the next of kin of the deceased person." *Cole, Raywid & Braverman v. Quadrangle Dev. Corp.*, App. D.C., 444 A.2d 969 (1982).

Equitably adopted child may be next of kin. — Given that this section is a remedial act and is to be interpreted liberally to effectuate its purpose, it serves its purpose to include equitably adopted children in the definition of "next of kin"; an equitably adopted child should not be barred from bringing an action for wrongful death because a tortfeasor allegedly caused the death of the equitably adoptive parent and thus made it impossible to carry out the intent of the parent to adopt the child. *Cole v. Washington Hosp. Ctr.*, 124 WLR 1973 (Super. Ct. 1996).

Multiple causes of action. — Negligent conduct resulting in death may generate simultaneously 2 independent causes of action. *Emmett v. Eastern Dispensary & Cas. Hosp.*, 396 F.2d 931 (D.C. Cir. 1967); *Wharton v. Jones*, 285 F. Supp. 634 (D.D.C. 1968); *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575

F.2d 922 (D.C. Cir. 1978); *Waldon v. Covington*, App. D.C., 415 A.2d 1070 (1980).

If a tort results in death, 2 causes of action arise, 1 under § 12-101, and the other under this section. *Graves v. United States*, 517 F. Supp. 95 (D.D.C. 1981).

Where the deceased was both a husband and father, recovery may be had under both the survival and the wrongful death provisions. *Runyon v. District of Columbia*, 463 F.2d 1319 (D.C. Cir. 1972).

Viable unborn children. — Viable unborn child is a "person" within the meaning of this section. *Simmons v. Howard Univ.*, 323 F. Supp. 529 (D.D.C. 1971).

A cause of action exists under both the survival and wrongful death statutes for the death of a viable fetus and under the survival statute, recovery may include lost future earnings. *Williams v. Crooks*, 111 WLR 773 (Super. Ct. 1983).

A viable fetus has a right to be free of tortious injury; a child born alive has a cause of action for such an injury; a viable fetus negligently injured en ventre sa mere is a "person" within the meaning of the District wrongful death and survival statutes. *Greater S.E. Community Hosp. v. Williams*, App. D.C., 482 A.2d 394 (1984).

Burden of proof. — The burden of establishing and proving causation, negligence, or intent is upon the administratrix. *Waldon v. Covington*, App. D.C., 415 A.2d 1070 (1980).

Tolling of limitations. — The pendency of a personal injury action under the survival provisions does not toll the statute of limitations on a death claim, and vice versa. *Wharton v. Jones*, 285 F. Supp. 634 (D.D.C. 1968).

Expiration of the statute of limitations. — No wrongful death action lies if the decedent could not have brought suit before his death because of the expiration of the statute of limitations. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193 (D.C. Cir. 1994).

Discovery rule. — The discovery rule exception does not apply to a wrongful death claim. *Berg v. Footer*, 120 WLR 2253 (Super. Ct. 1992).

Plaintiff is given the benefit of tolling the statute until the concealment ends unless exercising due diligence, through any means including an effort to obtain the undisclosed information that masks the claim, plaintiff knew or could have known of the possible claim. *Berg v. Footer*, 120 WLR 2253 (Super. Ct. 1992).

Plaintiff failed to exercise due diligence to obtain the information a hospital had withheld where the concealment could have been ended through the simple expedient of a second request. *Berg v. Footer*, 120 WLR 2253 (Super. Ct. 1992).

Choice of law. — The District of Columbia has increasingly applied an "interest analysis" approach to choice of law questions in tort cases

in general and wrongful death cases in particular. *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922 (D.C. Cir. 1978).

Estoppel of action. — Having obtained a favorable Virginia judgment premised on the applicability of the Virginia wrongful death law, a plaintiff was estopped from subsequently claiming that District law rather than Virginia law governed the rights and liabilities of the parties. *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922 (D.C. Cir. 1978).

An adverse judgment in a suit by a widow, as the sole beneficiary, to collect on her husband's insurance policy does not collaterally estop her, as the administratrix of the estate of the deceased, from bringing an action on her own behalf and on the behalf of her minor children for wrongful death. *Smith v. Hood*, 396 F.2d 692 (D.C. Cir. 1968).

Dismissal with prejudice. — The court does not have the authority to reinstate a wrongful death action dismissed with prejudice for lack of prosecution on the basis of a motion which alleges that the failure to prosecute was due to financial hardship, which does not set forth any newly acquired information or allegations justifying a release and which does not allege that a prima facie case can be presented. *Colbert Refrigeration Co. v. Edwards*, App. D.C., 356 A.2d 331 (1976).

Cited in *District of Columbia v. Downs*, App. D.C., 357 A.2d 857 (1976); *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978); *Hughes v. Pender*, App. D.C., 391 A.2d 259 (1978); *In re Air Crash Disaster*, 476 F. Supp. 521 (D.D.C. 1979); *Quin v. George Washington Univ.*, App. D.C., 407 A.2d 580 (1979); *de Letelier v. Republic of Chile*, 488 F. Supp. 665 (D.D.C. 1980); *de Letelier v. Republic of Chile*, 502 F. Supp. 259 (D.D.C. 1980); *Higgins v. Washington Metro. Area Transit Auth.*, 507 F. Supp. 984 (D.D.C. 1981); *Wilson v. Johns-Manville Sales Corp.*, 684 F.2d 111 (D.C. Cir. 1982); *District of Columbia v. White*, App. D.C., 442 A.2d 159 (1982); *In re Air Crash Disaster at Wash.*, 559 F. Supp. 333 (D.D.C. 1983); *Young v. Firemen's Ins. Co.*, App. D.C., 463 A.2d 675 (1983); *McCoy v. Quadrangle Dev. Corp.*, App. D.C., 470 A.2d 1256 (1983); *Romero v. National Rifle Ass'n of Am., Inc.*, 749 F.2d 77 (D.C. Cir. 1984); *Rustin v. District of Columbia*, App. D.C., 491 A.2d 496, cert. denied, 474 U.S. 946, 106 S. Ct. 343, 88 L. Ed. 2d 290 (1985); *Waldman v. Levine*, App. D.C., 544 A.2d 683 (1988); *Stutsman v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, App. D.C., 546 A.2d 367 (1988); *Stewart v. Capitol Area Permanente Medical Group*, 720 F. Supp. 3 (D.D.C. 1989); *Peek v. District of Columbia*, App. D.C., 567 A.2d 50 (1989); *Rose v. Kaiser Found.*, 117 WLR 2101 (Super. Ct. 1989); *Miles v. Chumpitazi*, 117 WLR 2141 (Super. Ct. 1989); *Klahr v. District of Columbia*, App. D.C., 576 A.2d 718

(1990); *Wanzer v. District of Columbia*, App. D.C., 580 A.2d 127 (1990); *Kaiser Found. Health Plan of Mid-Atlantic States, Inc. v. Rose*, App. D.C., 583 A.2d 156 (1990); *District of Columbia v. Brown*, App. D.C., 589 A.2d 384 (1991); *Washington Metro. Area Transit Auth. v. Davis*, App. D.C., 606 A.2d 165 (1992); *Lancaster v. District of Columbia*, 120 WLR 1593 (Super. Ct. 1992); *State Farm Mut. Auto. Ins. Co. v. Smalls*, 121 WLR 117 (Super. Ct. 1992); *District of Columbia v. Evans*, App. D.C., 644 A.2d 1008 (1994); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995); *Hawkins v. District of Columbia*, 124 WLR 1125 (Super. Ct. 1996); *Etchebarne-Bourdin v. Bourdin*, 124 WLR 2261 (Super. Ct. 1996).

II. DAMAGES.

Elements of recovery. — Two main elements form basis for recovery under the Wrongful Death Act. The first element compensates for pecuniary loss — calculated as the annual share of decedent's dependents in the decedent's earnings, multiplied by the decedent's work life expectancy, and discounted to present value. The second element compensates for the value of the services lost to the family as a result of decedent's death. *Doe v. Binker*, App. D.C., 492 A.2d 857 (1985).

Compensation for financial loss. — Proper recovery under chapter is principally amount of financial loss to surviving spouse and next of kin. *Runyon v. District of Columbia*, 463 F.2d 1319 (D.C. Cir. 1972).

The proper recovery under this section is the amount of financial loss suffered by the spouse and next of kin as a result of the decedent's death; there is no provision for the recovery by the decedent's survivors for mental suffering, grief, or anguish. *Saunders v. Air Fla., Inc.*, 558 F. Supp. 1233 (D.D.C. 1983).

Loss of consortium damages. — This section does not provide for the recovery of damages for loss of consortium. *Joy v. Bell Helicopter Textron, Inc.*, 999 F.2d 549 (D.C. Cir. 1993).

Compensation for grief. — This chapter does not authorize compensation for grief caused the surviving spouse and next of kin. *Runyon v. District of Columbia*, 463 F.2d 1319 (D.C. Cir. 1972).

Hedonic damages. — Hedonic damages, damages for the loss of life's pleasures, are not recoverable under District of Columbia tort law. *Richardson v. District of Columbia*, 116 WLR 2609 (Super. Ct. 1988).

Damages measured from date of death. — Damages should be measured from the date of the decedent's death and not some later date, on the basis of relevant factors. *Doe v. Binker*, App. D.C., 492 A.2d 857 (1985).

Definite dollar values need not be established. — Where liability is established, recov-

ery is not precluded on the ground that definite dollar values were not established with reference to the factors entering into the verdict. *Elliott v. Michael James, Inc.*, 559 F.2d 759 (D.C. Cir. 1977).

Excessive awards. — A damage award is excessive where it does not consider the vicissitudes of fortune, the buffeting of fate, and the uncertainties of life and health. *Thomas v. Potomac Elec. Power Co.*, 266 F. Supp. 687 (D.D.C. 1967).

Substantial evidence. — Notwithstanding the jury's broad discretion in assessing damages, there must be substantial evidence upon which the award is predicated. To be substantial, the evidence must be more than a scintilla, but it need not point entirely in one direction. *Doe v. Binker*, App. D.C., 492 A.2d 857 (1985).

Expert economic testimony in a wrongful death case represents only a guideline and may not be adopted at its face value as the sole basis for the determination of damages for death. *Doe v. Binker*, App. D.C., 492 A.2d 857 (1985).

Reduction of verdict. — Trial court is empowered to act sua sponte in the exercise of its sound discretion to order the reduction of a verdict, without a time limitation, and to do so without the necessity of requiring a remittitur as a condition to a denial of a new trial. *Thomas v. Potomac Elec. Power Co.*, 266 F. Supp. 687 (D.D.C. 1967).

III. SPECIFIC ACTIONS.

Intentional infliction of emotional distress. — Common elements in an action for intentional infliction of extreme emotional distress are deceit or falsity, a total lack of privilege, and such wantonness that it can be presumed that the defendant would foresee severe consequences. *Waldon v. Covington*, App. D.C., 415 A.2d 1070 (1980).

Unlike an action for negligent infliction of extreme emotional distress, an action for intentional infliction may be made out even in the absence of physical injury or impact. *Waldon v. Covington*, App. D.C., 415 A.2d 1070 (1980).

Acts giving rise to liability for intentional infliction of extreme emotional distress must be "beyond all bounds of decency" and "without just cause or excuse." *Waldon v. Covington*, App. D.C., 415 A.2d 1070 (1980).

In an action for damages based on a claim of intentional infliction of extreme emotional distress, subjective intent can rarely be proven directly; therefore, the requisite intent must be inferred, either from the very outrageousness of the defendant's acts or, for example, when the circumstances are such that any reasonable person would have known that an emotional distress and physical harm would result. *Waldon v. Covington*, App. D.C., 415 A.2d 1070 (1980).

In an action for damages based on a claim of intentional infliction of extreme emotional distress, the actor's lack of privilege (of "just cause or excuse") is another element that must be assessed in determining whether his acts are so outrageous that harmful intent can be presumed. *Waldon v. Covington*, App. D.C., 415 A.2d 1070 (1980).

Violation of building code. — Evidence of a violation of a building code which led to the death of the decedent establishes proximate cause and negligence per se unless the jury is satisfied that the preponderance of the evidence is to the contrary. *Elliott v. Michael James, Inc.*, 559 F.2d 759 (D.C. Cir. 1977).

Fiducial duty to patient cannot be ascribed to nontreating physicians who reviewed operating surgeon's performance. — In wrongful death action, assuming arguendo that hospital center had a fiducial duty to a patient undergoing surgery in its operating rooms, such a duty cannot be ascribed to nontreating physicians who reviewed operating surgeon's performance at hospital's request after patient's death during surgery, but did not inform decedent's family of the outcome of their investigation. *Jackson v. Scott*, 118 WLR 1293 (Super. Ct. 1990).

Voluntarily hospitalized mental patient. — It is customary for practitioners to notify the police that a patient has left the hospital only in situations where involuntary hospitalization is an issue, and where mental patient who left VA hospital and committed suicide had voluntarily hospitalized himself, and there was no evidence to support a finding that he was an imminent danger to himself or others at any time prior to the moment he shot himself, or that defendant's medical personnel at hospital were aware or should have been aware of such danger, the hospital did not breach the standard of care applicable to the care and treatment of the patient at the facility, and hospital's failure to call the police or vigorously urge patient's family to return him to the hospital was not the proximate cause of his death. *Dutcher v. United States*, 736 F. Supp. 1142 (D.D.C.), *aff'd*, 923 F.2d 200 (D.C. Cir. 1990).

Negligence resulting in suicide of another. — As a general rule, one may not recover damages in negligence for the suicide of another; the act of suicide generally is considered to be a deliberate, intentional, and intervening act which precludes a finding that a given defendant is, in fact, responsible for the decedent's death. This general rule is subject to an important exception, which is stated in the "Restatement (Second) of Torts" § 455 (1977) and applied by the Court of Appeals that: "If the actor's negligent conduct so brings about the delirium or insanity of another as to make the actor liable for it, the action is also liable for harm done by the other to himself while delir-

ious or insane, if his delirium or insanity . . . makes it impossible for him to resist an impulse caused by his insanity which deprives him of his capacity to govern his conduct in accordance with reason." *District of Columbia v. Peters*, App. D.C., 527 A.2d 1269 (1987).

Negligence causing stillbirth. — Evidence of obstetrician's negligence resulting in stillbirth sufficient for recovery under this section. *Crooks v. Williams*, App. D.C., 508 A.2d 912 (1986).

Excessive force by law enforcement officers. — If a law enforcement officer used any force in excess of that reasonably necessary to accomplish his lawful purpose, he would be liable for any injuries or death and damage suffered as a result thereof. *Hoston v. United States*, 566 F. Supp. 1125 (D.D.C. 1983).

Civil liability for coconspirator in criminal actions. — Joint venturer and coconspirator in burglary was found to be liable in a wrongful death action for death resulting from burglary. *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983).

Cause of action arising from detention in D.C. Jail. — The trial judge did not abuse her discretion in setting aside the verdict where

she was convinced that the gross disproportion between decedent/detainee's proven pain and suffering and the size of the damage award reflected the jury's determination to punish the District for tolerating the squalid conditions at D.C. Jail, of which it had heard so much evidence. *Finkelstein v. District of Columbia*, App. D.C., 593 A.2d 591 (1991).

Whatever caused decedent's asthma attack, the jury could have properly found from the evidence that the District committed distinct acts of negligence in allowing decedent to be out of his cell and to engage in group sexual activity, possibly against his will, to be chemically sprayed, and allowing him to die from the asthma attack without intervention, and that each resulted in compensable injuries. *Finkelstein v. District of Columbia*, App. D.C., 593 A.2d 591 (1991).

Duty to reveal prior history of violent crimes. — A district parole officer has a duty to reveal a parolee's prior history of violent crimes to a potential employer of the parolee. *Rieser v. District of Columbia*, 563 F.2d 462 (D.C. Cir. 1977), modified on rehearing, 580 F.2d 647 (D.C. Cir. 1978).

§ 16-2702. Party plaintiff; statute of limitations.

An action pursuant to this chapter shall be brought by and in the name of the personal representative of the deceased person, and within one year after the death of the person injured. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1; 1973 Ed., § 16-2702.)

Cross references. — As to limitations on actions arising out of death or injury caused by defective or unsafe improvement to real property, see § 12-310.

"Personal representative". — Although the term "personal representative" is limited to qualified executors and administrators, a party who brings an action under this chapter is a nominal party only and does not act in his capacity as executor or administrator. *Strother v. District of Columbia*, App. D.C., 372 A.2d 1291 (1977).

The term "personal representative" has been strictly construed to mean the decedent's executor or administrator, to the exclusion of all other persons. *Cole, Raywid & Braverman v. Quadrangle Dev. Corp.*, App. D.C., 444 A.2d 969 (1982).

Personal representative has exclusive right to bring action. — A right to bring an action for wrongful death is conferred upon only 1 person, the "personal representative of the deceased person." *Cole, Raywid & Braverman v. Quadrangle Dev. Corp.*, App. D.C., 444 A.2d 969 (1982).

Action derivative in nature. — A wrongful

death action is derivative in nature; that is, a defense that would have applied against a decedent had he brought suit before his death operates against his survivor in an action for wrongful death. Accordingly, if decedent's cause of action was time-barred at his death, his son's recovery for his wrongful death is likewise barred. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193 (D.C. Cir. 1994).

Construction. — District's wrongful death statute must be read, if possible, without reference to other statutes. *Group Health Ass'n v. Gatlin*, App. D.C., 463 A.2d 700 (1983).

The language of the statute does not create a general statute of limitations which is subject to a savings clause attendant to another legislative enactment. *Group Health Ass'n v. Gatlin*, App. D.C., 463 A.2d 700 (1983).

Parents of decedent. — A decedent's parents who are not his personal representatives may not maintain action under this chapter. *Saunders v. Air Fla., Inc.*, 558 F. Supp. 1233 (D.D.C. 1983).

Action subject to limitations period. — The bringing of an action within 1 year is a condition attached to the right to sue. *Group*

Health Ass'n v. Gatlin, App. D.C., 463 A.2d 700 (1983).

Minority of heirs. — The limitations contained in this section are not tolled by surviving heirs' minority. Group Health Ass'n v. Gatlin, App. D.C., 463 A.2d 700 (1983).

Action refiled after expiration of statutory period not barred due to prior stipulation. — Where claims in a later complaint in a wrongful death action brought by decedent's widow and executrix allege essentially the same facts and theories as those in an earlier complaint, which had been dismissed with stipulation that defendant would not invoke statute of limitations if plaintiff were to refile the action after statutory period had expired, the action is not barred under this section. Leachman v. Beech Aircraft Corp., 694 F.2d 1301 (D.C. Cir. 1982).

Statute of limitations runs on unserved party without knowledge of action. — Where no service is made on the named defendants within the period of limitations and there is no showing that, within such period, a 3rd party allegedly at fault or the named defendants had knowledge of the extent of their alleged involvement or that the action had been instituted, the statute of limitations runs as to the 3rd party, notwithstanding the rule as to the relation back of amendments. Patterson v. White, 51 F.R.D. 175 (D.D.C. 1970).

Fraudulent concealment of information tolls limitations period. — Fraudulent concealment of needed information tolls the running of the statute of limitations. Emmett v. Eastern Dispensary & Cas. Hosp., 396 F.2d 931 (D.C. Cir. 1967).

Fraudulent concealment is the only instance where an appellate court has ruled that the statute of limitations may be tolled in a wrongful death action. Coleman v. Group Health Ass'n, 118 WLR 2289 (Super. Ct. 1990).

Tortfeasor's failure to file accident report and concealment of his identity does not toll the running of limitation period under this section. Estate of Chappelle v. Sanders, App. D.C., 442 A.2d 157 (1982).

Discovery rule. — The discovery rule will not toll the statute of limitations in a wrongful

death action. Coleman v. Group Health Ass'n, 118 WLR 2289 (Super. Ct. 1990).

Limitations contained in this section not tolled by arbitration claim. — Appellants' arbitration claim, which was a condition precedent to the institution of a court action in Maryland, but which was not a condition of their right to sue in the District of Columbia nor part of their substantive cause of action for wrongful death, did not toll the limitations period for filing suit in Superior Court. Huang v. D'Albora, App. D.C., 644 A.2d 1 (1994).

Statute tolled until tortfeasor's identity known. — Statute of limitations begins to run when identity of tortfeasor is known. Eldridge v. Burrows, 112 WLR 605 (Super. Ct. 1984).

Failure to permit inspection of decedent's medical records. — See Emmett v. Eastern Dispensary & Cas. Hosp., 396 F.2d 931 (D.C. Cir. 1967).

Adverse judgment on insurance policy fails to estop wrongful death action. — An adverse judgment in a suit by a widow, as the sole beneficiary, to collect on her husband's insurance policy, does not collaterally estop her, as the administratrix of the estate of the deceased, from bringing an action on her own behalf and on the behalf of her minor children for wrongful death. Smith v. Hood, 396 F.2d 692 (D.C. Cir. 1968).

Cited in Chandler v. District of Columbia, App. D.C., 404 A.2d 964 (1979); Wilson v. Thornton, App. D.C., 416 A.2d 228 (1980); Higgins v. Washington Metro. Area Transit Auth., 507 F. Supp. 984 (D.D.C. 1981); Wilson v. Johns-Manville Sales Corp., 684 F.2d 111 (D.C. Cir. 1982); Halberstam v. Welch, 705 F.2d 472 (D.C. Cir. 1983); Young v. Firemen's Ins. Co., App. D.C., 463 A.2d 675 (1983); Swann v. Waldman, App. D.C., 465 A.2d 844 (1983); International Tours & Travel, Inc. v. Khalil, App. D.C., 491 A.2d 1149 (1985); Peek v. District of Columbia, App. D.C., 567 A.2d 50 (1989); Bonan v. Washington Hosp. Ctr., 119 WLR 1685 (Super. Ct. 1991); Wolfe v. Fine, App. D.C., 618 A.2d 169 (1992); Achievers Invs., Inc. v. Karalekas, App. D.C., 675 A.2d 946 (1996).

§ 16-2703. Distribution of damages.

The damages recovered in an action pursuant to this chapter, except the amount specified by the verdict or judgment covering the reasonable expenses of last illness and burial, may not be appropriated to the payment of the debts or liabilities of the deceased person, but inure to the benefit of his or her family and shall be distributed to the spouse and next of kin according to the allocation made by the verdict or judgment, or in the absence of an allocation, according to the provisions of the statute of distribution in force in the District. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1; 1973 Ed., § 16-2703.)

Cross references. — As to descent and distributions for intestates' estates, see § 19-301 et seq.

As to hospital lien on wrongful death damages, see § 38-301.

Cited in *Chandler v. District of Columbia*, App. D.C., 404 A.2d 964 (1979); *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983).

CHAPTER 29. PARTITION AND ASSIGNMENT OF DOWER.

Subchapter I. Partition Generally.

Sec.

16-2901. Parties; accounting by tenant in common.

Subchapter II. Assignment of Dower; Parties to Partition Proceeding; Sale of Property Discharged from Dower or Spouse's Intestate Share.

16-2921. Appointment of commissioners; cases of partition.

Sec.

16-2922. Widow or widower of tenant in common.

16-2923. Wife or husband as party to partition proceeding.

16-2924. Sale of land encumbered by dower; lack of widow's or widower's consent; written consent; portion of proceeds.

16-2925. Sale of indivisible property; discharge from dower or intestate share.

Subchapter I. Partition Generally.

§ 16-2901. Parties; accounting by tenant in common.

(a) The Superior Court of the District of Columbia may decree a partition of lands, tenements, or hereditaments on the complaint of a tenant in common, claiming by descent or purchase, or of a joint tenant; or when it appears that the property can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from the sale among the parties, according to their respective rights.

(b) This section applies to cases where:

- (1) all the parties are of full age;
- (2) all the parties are infants;
- (3) some of the parties are of full age and some are infants;
- (4) some or all of the parties are non compos mentis; and

(5) all or any of the parties are non-residents — and a party, whether of full age, infant, or non compos mentis, may file a complaint pursuant to this section, an infant by his guardian or next friend, and a person non compos mentis by his committee.

(c) In a case of partition, when a tenant in common has received the rents and profits of the property to his own use, he may be required to account to his cotenants for their respective shares of the rents and profits. Amounts found to be due on the accounting may be charged against the share of the party owing them in the property, or its proceeds in case of sale.

(d) This section does not affect sections 21-146 and 21-704. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(1), (2); 1973 Ed., § 16-2901.)

Cross references. — As to service by publication on nonresident and absent defendants, or against unknown heirs or devisees, see § 13-336.

As to dower rights, see § 19-102 et seq.

As to abolishment of estates in coparcenary, see § 45-217.

Section references. — This section is referred to in § 20-1105.

References in text. — Section 21-704, re-

ferred to in subsection (d), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

Partition as a matter of right. — A tenant in common is entitled to seek partition of real property as a matter of right. *Hinton v. Hinton*, App. D.C., 395 A.2d 7 (1978); *Farmer v. Farmer*, App. D.C., 526 A.2d 1365 (1987).

Quasi in rem proceeding. — An action for partition is a proceeding which is quasi in rem. *Hinton v. Hinton*, App. D.C., 395 A.2d 7 (1978).

Notice is core question. — The core question in a partition suit is not whether the court has acquired personal jurisdiction over the defendant (which it does not need) but rather whether the defendant has been given sufficient notice, under all the circumstances, to apprise him of the pendency of the action and afford him an opportunity to object. *Hinton v. Hinton*, App. D.C., 395 A.2d 7 (1978).

Terms of sale. — Directing a sale of realty for terms higher than a cash offer is not in itself a violation of the partition statute or Super. Ct. Civ. R. 308, nor is it an abuse of discretion. *Farmer v. Farmer*, App. D.C., 526 A.2d 1365 (1987).

Judicial confirmation. — Because judicial confirmation of private sales is required in order to ensure fairness to the parties, a party is entitled to full procedural protections, especially where he has a possessory interest. *Farmer v. Farmer*, App. D.C., 526 A.2d 1365 (1987).

Effect of divorce decree. — In an action for partition involving the original parties to the property division under a divorce decree, where the full rights of the parties are uncertain from a reading of the entire decree, a court has the power to determine whether the decree itself, taken as a whole and considered in the context of the divorce proceedings, imposes limitations or conditions on the cotenancy interests affecting the right of partition. *Carter v. Carter*, App. D.C., 516 A.2d 917 (1986), cert. denied, 481 U.S. 1054, 107 S. Ct. 2193, 95 L. Ed. 2d (1987).

Parties do not automatically receive one-half of jointly held property upon divorce. — The fact that parties to a divorce become tenants in common as to the property they owned as tenants by the entirety does not

mean that each has to receive one-half of the property, for the rule is that the court must first determine the respective shares which the parties hold in the property before the property can be divided. *Sebold v. Sebold*, 444 F.2d 864 (D.C. Cir. 1971).

Share of nonpurchasing tenant. — A nonpurchasing spouse takes an equal share in property held in tenancy by entirety in consideration of the faithful performance of marriage vows. *Sebold v. Sebold*, 444 F.2d 864 (D.C. Cir. 1971).

Court not authorized to order sale of interest of 1 tenant in common to other. — Nothing in the language of this section authorizes a trial court to order the sale of the interest of 1 tenant in common to the other. *Hairston v. Hairston*, App. D.C., 454 A.2d 1369 (1983).

Accounting. — A party is entitled to accounting of rents and profits from District properties which were owned as tenancies by the entirety with her former husband and of any investments made from such income, at least from the date on which the parties became tenants in common. *Sebold v. Sebold*, 444 F.2d 864 (D.C. Cir. 1971).

Appeal from unequal property award. — The successful maintenance of a suit for the partition of property acquired in marriage does not necessarily result in an equal division of the property; therefore, an appeal from any unequal property award will still be treated as an appeal from a decree partitioning property. *Sebold v. Sebold*, 444 F.2d 864 (D.C. Cir. 1971).

Cited in *Benvenuto v. Benvenuto*, App. D.C., 389 A.2d 795 (1978); *Robinson v. Evans*, App. D.C., 554 A.2d 332 (1989); *Lynn v. Lynn*, App. D.C., 617 A.2d 963 (1992).

Subchapter II. Assignment of Dower; Parties to Partition Proceeding; Sale of Property Discharged from Dower or Spouse's Intestate Share.

§ 16-2921. Appointment of commissioners; cases of partition.

When real property is held by a person or persons, by descent or purchase, in the whole of which a widow or widower is entitled to dower, either the widow or widower of a person entitled to the property or an undivided share therein may apply to the Superior Court of the District of Columbia to have the dower therein assigned. Thereupon, the court shall appoint three commissioners to lay off and assign the dower, if practicable. The report of the commissioners is subject to ratification by the court. In all cases of partition between two or more joint tenants or tenants in common of real property, in the whole or [of] which a widow or widower is entitled to dower, the dower shall be laid off and assigned, in like manner, before the partition is decreed. When an estate of

which a woman or man is dowable is entire, and the dower can not be set off therefrom by metes and bounds, it may be assigned by the court as of a third part of the net rents, issues, and profits thereof. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(1); 1973 Ed., § 16-2921.)

Cross references. — As to release of dower, see § 19-107a.

Section references. — This section is referred to in §§ 16-2922 and 20-1105.

Editor's notes. — In the next-to-last sentence of this section, "of" was inserted, in brackets, for sense of text.

§ 16-2922. Widow or widower of tenant in common.

When a widow or widower of a tenant in common of real property is entitled to dower in his or her undivided share of the property, and a partition is decreed between his or her heirs or devisees and the other tenants in common, the dower attaches to, and may, in the manner provided by section 16-2921, be assigned and laid out in, the shares assigned in severalty to the heirs or devisees, and the shares of the other tenants in common shall be assigned to them, respectively, in severalty, free from the dower. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1; 1973 Ed., § 16-2922.)

Section references. — This section is referred to in § 20-1105.

§ 16-2923. Wife or husband as party to partition proceeding.

On an application to the court to decree a partition of real property between tenants in common, it shall not be necessary to make the wife or husband of any of the persons a party to the proceedings, but the right of dower, or the wife's or husband's intestate share, as the case may be, shall attach to whatever part of the property is assigned in severalty to the wife or husband, and the other parts thereof shall be assigned free of the right of dower or intestate share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(3); 1973 Ed., § 16-2923.)

Section references. — This section is referred to in § 20-1105.

§ 16-2924. Sale of land encumbered by dower; lack of widow's or widower's consent; written consent; portion of proceeds.

When a decree is rendered for the sale of real property, in the whole of which a widow or widower is entitled to dower, if she or he will not consent to a sale of the property free of the dower, the court may, if it appears advantageous to the parties, cause the dower to be laid off and assigned as provided by this subchapter. If she or he will consent in writing to the sale of the property free of the dower, the court shall order that it be sold free of the dower, and shall

allow her or him, in commutation of the dower, such portion of the net proceeds of sale as may be just and equitable, not exceeding one-sixth nor less than one-twentieth, according to the age, health, and condition of the widow or widower. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(3); 1973 Ed., § 16-2924.)

Section references. — This section is referred to in § 20-1105.

§ 16-2925. Sale of indivisible property; discharge from dower or intestate share.

When real property is decreed to be sold for the purpose of division of the proceeds between tenants in common because the property is incapable of being divided between them in specie, the court may decree a sale of the property free and discharged from any right of dower or from any intestate share of the wife or husband, as the case may be, of any of the parties in her or his undivided share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(3); 1973 Ed., § 16-2925.)

Section references. — This section is referred to in § 20-1105.

CHAPTER 31. PROBATE COURT PROCEEDINGS.

Sec.	Sec.
16-3101. Definition.	and decrees; application of property sequestrated.
16-3102. Settlement of accounts as prima facie evidence only.	16-3108. Ordering investment of funds; revocation of letters for noncompliance.
16-3103. Summons; failure to appear or give evidence.	16-3109. Compelling performance of duties by personal representatives, special administrators, etc.; revocation of letters.
16-3104. Sequestration where person fails to appear.	16-3110. Order admitting will to probate as conclusive evidence.
16-3105. Plenary proceeding; refusal to answer as required.	16-3111. Arbitration; exceptions.
16-3106. Issues to be made up in plenary proceeding; jury; compelling payment of costs.	16-3112. Costs and execution.
16-3107. Enforcement of judgments, orders	

§ 16-3101. Definition.

As used in this chapter, the term "Probate Court" means the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(1); 1973 Ed., § 16-3101.)

§ 16-3102. Settlement of accounts as prima facie evidence only.

Except as provided by section 16-3111, in actions:

(1) for an accounting, by legatees or next to kin against personal representatives, or wards against their guardians; or

(2) to subject the real estate of decedents to the payment of their debts, by creditors against personal representatives, or against heirs or devisees — a prior settlement of accounts in the Probate Court is only prima facie evidence as to the correctness of the accounts. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; 1973 Ed., § 16-3102; Sept. 6, 1980, D.C. Law 3-85, § 5(a), 27 DCR 2900; Apr. 30, 1988, D.C. Law 7-104, § 4(t), 35 DCR 147.)

Legislative history of Law 3-85. — Law 3-85, the "enacted Titles Numbering and Amendment Act of 1980," was introduced in Council and assigned Bill No. 3-296, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 20, 1980, and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-202 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

§ 16-3103. Summons; failure to appear or give evidence.

A summons issued by the Probate Court to a person concerned in the affairs of a deceased person, or to a witness or other person whose appearance in the court is deemed necessary or proper, is returnable at the discretion of the court. When it is necessary or proper on the return of the "summoned", and failure of

the person to appear, to enforce his appearance, or when a witness before the court refuses to give evidence, the court may exercise its contempt power, or it may have his estate, or a part thereof attached and sequestered as provided by section 16-3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(2); 1973 Ed., § 16-3103.)

Section references. — This section is referred to in § 16-3107.

§ 16-3104. Sequestration where person fails to appear.

(a) If two summonses issued to a person by the Probate Court are regularly returned non est by the United States marshal and it is necessary to proceed further to compel the person's attendance, the court may order and issue an attachment against his real and personal property. On return of the attachment, to which a schedule of the attached property, if any, shall be annexed, the court, by order, or commission under seal, may authorize a person or persons to take into his or their care and custody the property returned in the schedule, or a part thereof, and receive the profits thereof, to be accounted for, until the person summoned appears and obeys the order of the court, or until further order. If the marshal or other officer does not deliver the property accordingly, he is liable to be proceeded against as provided by this subsection.

(b) The persons authorized pursuant to subsection (a) of this section to take into their care and custody the property referred to shall first give bond with such security, and in such penalty, as the court directs. The bond shall be recorded, may be sued on, shall be on a footing with an administration bond, and shall be conditioned for rendering a true account of the estate or property, and of the profits thereof, and to deliver the property according to the order of the court, after deducting such allowance for loss, and such commission, not exceeding 5 per centum of the whole, as the court deems proper.

(c) When the purpose for which property sequestered under this section is answered, the court shall direct that the estate or property, and the profits, after making the deductions authorized by subsection (b) of this section, be restored to the person from whom the care and custody of the property were taken. When the person is dead, the court shall order the property to be delivered to his heirs, devisees or legal representatives, as soon as the purpose of the sequestration is answered, or immediately, on application, and on satisfying the court of the person's right, if the purpose, after the death of the original person, can not be answered. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(3); 1973 Ed., § 16-3104.)

Section references. — This section is referred to in §§ 16-3103 and 16-3105 to 16-3107.

§ 16-3105. Plenary proceeding; refusal to answer as required.

When either of the parties having a contest in the Probate Court requires, the court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath or affirmation. If the party, refuses to answer on oath or affirmation, as the case may require, to any matter alleged in the bill or petition, and proper for the court to decide upon, the court may exercise its contempt power, or it may have his property attached and sequestered as provided by section 16-3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(2); 1973 Ed., § 16-3105.)

Section references. — This section is referred to in § 16-3106.

Cited in *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

§ 16-3106. Issues to be made up in plenary proceeding; jury; compelling payment of costs.

In a plenary proceeding provided for by section 16-3105, the Probate Court shall give judgment, or decree upon the bill and answer, or upon bill, answer, depositions, or finding of the jury. In all cases of contest, the court may award costs to the party deemed entitled thereto, and may compel payment by exercising its contempt power, or by attachment and sequestration of the property as provided by section 16-3104. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(2); 1973 Ed., § 16-3106.)

No obligation to reveal valuation of estate during settlement negotiations. — Neither the administratrix of the estate nor the attorney for the administratrix has an obligation to reveal during the settlement negotiations the amounts obtained from the prior sale

of individual items in the estate or any authoritative valuation of such items. *Bernstein v. Brenner*, 320 F. Supp. 1080 (D.D.C. 1970).

Cited in *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

§ 16-3107. Enforcement of judgments, orders and decrees; application of property sequestered.

The Probate Court may enforce its judgments, orders, decrees, and decisions in the manner provided by sections 16-3103 and 16-3104. When a judgment, order, decree, or decision is for the payment of money, the court may apply the property sequestered to the purpose for which the judgment, order, decree, or decision is given. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1; 1973 Ed., § 16-3107.)

Personal property. — There is no restriction upon Probate Court to adjudicate right to possession of personal property. *Price v. Williams*, 393 F.2d 348 (D.C. Cir. 1968).

property. *Anderson v. Pinkett*, 439 F.2d 619 (D.C. Cir. 1971).

Cited in *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

Title to property. — The Probate Court has no jurisdiction to decide the question of title to

§ 16-3108. Ordering investment of funds; revocation of letters for noncompliance.

The Probate Court may order a personal representative, special administrator, or guardian, whom it has appointed, to bring into court or invest in securities, to be approved by the court, any funds received by the personal representative, special administrator, or guardian. If the party does not, within a reasonable time, to be fixed by the court, comply with the order, the court may revoke his letters. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1; 1973 Ed., § 16-3108; Sept. 6, 1980, D.C. Law 3-85, § 5(b), 27 DCR 2900.)

Cross references. — As to obligations of Washington Metropolitan Area Transit Authority as lawful investments, see § 1-2461. **Legislative history of Law 3-85.** — See note to § 16-3102.

§ 16-3109. Compelling performance of duties by personal representatives, special administrators, etc.; revocation of letters.

The Probate Court may order a personal representative, special administrator, guardian, or testamentary trustee, who appears to be in default in respect to the rendering of an inventory or account or the fulfillment of a duty in the court, to be summoned to appear therein and fulfill his duty in the premises, on pain of revocation of his power to act. On his appearance, the court may make such order as is just. On his failure to appear, after having been duly summoned, the court may revoke his power to act and make such further order and other appointment as justice requires. If the summons to appear is returned by the marshal “not to be found,” an alias summons shall be mailed to the last-known post-office address of the fiduciary or served upon his attorney of record, if he is within the jurisdiction of the court. On the failure of the fiduciary to appear, the court may revoke his power to act and make such further order and other appointment as justice requires. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1; 1973 Ed., § 16-3109; Sept. 6, 1980, D.C. Law 3-85, § 5(b), 27 DCR 2900.)

Legislative history of Law 3-85. — See note to § 16-3102.

§ 16-3110. Order admitting will to probate as conclusive evidence.

With respect to the trial of issues in the Probate Court, including the taking and use of testimony of non-resident witnesses, the Federal Rules of Civil Procedure, unless otherwise provided by law, are applicable thereto. A final order or decree admitting a will to probate, unless and until it is reversed, is conclusive evidence of the validity of the will in a collateral proceeding in which the will is brought into question, and a transcript of the record of the will, and of the decree admitting it to probate, is sufficient proof thereof. (Dec. 23, 1963,

§ 16-3111 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

77 Stat. 601, Pub. L. 88-241, § 1; 1973 Ed., § 16-3111; Sept. 6, 1980, D.C. Law 3-85, § 5(c), 27 DCR 2900.)

Legislative history of Law 3-85. — See note to § 16-3102.

§ 16-3111. Arbitration; exceptions.

The Probate Court may, with the consent in writing of both parties, arbitrate between a complainant and a personal representative, or between a personal representative and a person against whom the estate represented by him has a claim, or, with like consent, may refer the matter in dispute to an arbitrator. If reserved by the parties in their submission, exception as to matters of law may be filed to the award of the arbitrator, and the court may confirm or overrule the award. The award when confirmed is conclusive between the parties. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1; 1973 Ed., § 16-3112; Sept. 6, 1980, D.C. Law 3-85, § 5(c), (d), 27 DCR 2900.)

Section references. — This section is referred to in § 16-3102.

Legislative history of Law 3-85. — See note to § 16-3102.

§ 16-3112. Costs and execution.

The Probate Court may render judgment for costs against the unsuccessful party in any proceeding conducted in the court, and issue execution thereof. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1; 1973 Ed., § 16-3113; Sept. 6, 1980, D.C. Law 3-85, § 5(c), 27 DCR 2900.)

Cross references. — As to fees and costs, see § 15-701 et seq.

Cited in *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

Legislative history of Law 3-85. — See note to § 16-3102.

CHAPTER 33. QUIETING TITLE OBTAINED BY ADVERSE POSSESSION.

Sec.

16-3301. Complaint; allegations; parties; service; decree.

§ 16-3301. Complaint; allegations; parties; service; decree.

(a) When title to real property in the District of Columbia has become vested in a person by adverse possession, the holder thereof may file a complaint in the Superior Court of the District of Columbia to have the title perfected. In the complaint, it is sufficient to allege that the plaintiff holds the title to the property, and that it has vested in him, or in himself and in those under whom he claims, by adverse possession. In the action, it is not necessary to make any person a party defendant except those persons who appear to have a claim or title adverse to that of the plaintiff. Upon the trial of the cause, proof of the facts showing title in the plaintiff by adverse possession entitles him to decree of the court declaring his title by adverse possession, and a copy of the decree may be entered of record in the office of the Recorder of Deeds for the District.

(b) In an action pursuant to this section, if process is returned not to be found, notice by publication may be substituted as in the case of nonresident defendants. Subject to subsection (c) of this section, if it is unknown whether one who, if living, would be an adverse party, is living or dead, or, in the case of a decedent, whether he died testate or left heirs, or his heirs or devisees are unknown, the cause may be proceeded with pursuant to section 13-341.

(c) The rights of infants or others under legal disability shall be saved for a period of two years after the removal of their disabilities, but the entire period during which they shall be preserved may not exceed twenty-two years from the time they accrued, either in the plaintiff or in the persons under whom he claims. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(m); 1973 Ed., § 16-3301.)

Cross references. — As to civil jurisdiction of Superior Court, see § 11-921.

As to limitations of time for bringing certain actions, see § 12-301.

As to service by publication on nonresident and absent defendants or against unknown heirs or devisees, see § 13-336.

As to defense of adverse possession in action to recover vacant and unimproved lots of ground, see § 16-1113.

Purpose. — The evils of absentee landlordism are partly what doctrine of adverse possession is meant to avoid. *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981).

Showing of adversity required. — No relief could be granted under this section, where there was no showing of adversity, and hence no valid claim of adverse possession. In re Tyree, App. D.C., 493 A.2d 314 (1985).

Focus of adversity determination. — The determination of adversity focuses essentially on factual manifestations of claimed owner-

ship. *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981).

Adverse use must be established by circumstances which reflect a claim of right to a reasonably attentive owner. *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981).

Adversity need not be asserted by oral claim of right. *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981).

Actual title. — Actual title absent actual possession is sufficient to maintain action against one asserting adverse use. *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981).

Acquiescence to suit. — Mere acquiescence to sue is not permission to sue. *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981).

Liability of landlords. — Landlords are not immunized from period of prescriptive use running against them while they are not in actual

§ 16-3301

PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

possession of the property. *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981).

Cited in *Sullivan v. Malarkey*, App. D.C., 392 A.2d 1057 (1978); *Smith v. Tippet*, App. D.C., 569 A.2d 1186 (1990).

CHAPTER 35. QUO WARRANTO.

<i>Subchapter I. Actions Against Officers of the United States.</i>	Sec. Corporation Counsel to act; procedures.
Sec.	
16-3501. Persons against whom issued; civil action.	<i>Subchapter III. Procedures and Judgments.</i>
16-3502. Parties who may institute; ex rel. proceedings.	16-3541. Allegations in petition of relator claiming office.
16-3503. Refusal of Attorney General or United States attorney to act; procedure.	16-3542. Notice to defendant.
<i>Subchapter II. Actions Against Officers or Corporations of the District of Columbia.</i>	16-3543. Proceedings on default.
16-3521. Persons against whom issued; civil action.	16-3544. Pleading; jury trial.
16-3522. Parties who may institute; ex rel. proceedings.	16-3545. Verdict and judgment.
16-3523. Refusal of United States attorney or	16-3546. Usurping corporate franchise; judgment.
	16-3547. Proceedings against corporate directors and trustees; judgment and order; enforcement.
	16-3548. Recovery of damages from usurper; limitation.

Subchapter I. Actions Against Officers of the United States.

§ 16-3501. Persons against whom issued; civil action.

A quo warranto may be issued from the United States District Court for the District of Columbia in the name of the United States against a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the United States or a public office of the United States, civil or military. The proceedings shall be deemed a civil action. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3501.)

Cross references. — As to issuance of quo warranto against institution of learning, see § 29-813.

§ 16-3502. Parties who may institute; ex rel. proceedings.

The Attorney General of the United States or the United States attorney may institute a proceeding pursuant to this subchapter on his own motion or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned on the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3502.)

Section references. — This section is referred to in § 16-3503.

§ 16-3503. Refusal of Attorney General or United States attorney to act; procedure.

If the Attorney General or United States attorney refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of the interested person on his compliance with the condition prescribed by section 16-3502 as to security for costs. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3503.)

Subchapter II. Actions Against Officers or Corporations of the District of Columbia.

§ 16-3521. Persons against whom issued; civil action.

A quo warranto may be issued from the Superior Court of the District of Columbia in the name of the District of Columbia against —

(1) a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the District of Columbia, a public office of the District of Columbia, civil or military, or an office in a domestic corporation; or

(2) one or more persons who act as a corporation within the District of Columbia without being duly authorized, or exercise within the District of Columbia corporate rights, privileges, or franchises not granted them by law in force in the District of Columbia.

The proceedings shall be deemed a civil action. (July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3521.)

Cross references. — As to civil jurisdiction of Superior Court, see § 11-921.

As to issuance of quo warranto against institution of learning, see § 29-813.

As to institution of quo warranto proceedings against cooperative association, see § 29-1106.

§ 16-3522. Parties who may institute; ex rel. proceedings.

The United States attorney or the Corporation Counsel may institute a proceeding pursuant to this subchapter on his own motion, or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned on the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant. (July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3522.)

Section references. — This section is referred to in § 16-3523.

§ 16-3523. Refusal of United States attorney or Corporation Counsel to act; procedures.

If the United States attorney or Corporation Counsel refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the District of Columbia, on the relation of the interested person, on his compliance with the conditions prescribed by section 16-3522 as to security for costs. (July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3523.)

Subchapter III. Procedures and Judgments.

§ 16-3541. Allegations in petition of relator claiming office.

When a quo warranto proceeding is against a person for usurping an office, on the relation of a person claiming the same office, the relator shall set forth in his petition the facts upon which he claims to be entitled to the office. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3541.)

§ 16-3542. Notice to defendant.

On the issuing of a writ of quo warranto the court may fix a time within which the defendant may appear and answer the writ. When the defendant cannot be found in the District of Columbia, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant does not appear, judgment may be rendered as if he had been personally served. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3542.)

§ 16-3543. Proceedings on default.

If the defendant does not appear as required by a writ of quo warranto, after being served, the court may proceed to hear proof in support of the writ and render judgment accordingly. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3543.)

§ 16-3544. Pleading; jury trial.

In a quo warranto proceeding, the defendant may demur, plead specially, or plead "not guilty" as the general issue, and the United States or the District of

Columbia, as the case may be, may reply as in other actions of a civil character. Issues of fact shall be tried by a jury if either party requests it. Otherwise they shall be determined by the court. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3544.)

§ 16-3545. Verdict and judgment.

Where a defendant in a quo warranto proceeding is found by the jury to have usurped, intruded into, or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3545.)

§ 16-3546. Usurping corporate franchise; judgment.

Where a quo warranto proceeding is against persons acting as a corporation without being legally incorporated, the judgment against the defendants shall be that they be perpetually restrained and enjoined from the commission or continuance of the acts complained of. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3546.)

§ 16-3547. Proceedings against corporate directors and trustees; judgment and order; enforcement.

Where a quo warranto proceeding is against a director or trustee of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result if the error is corrected, the court may render judgment that the defendant be ousted, and that the relator, if entitled to be declared elected, be admitted to the office, and the court may issue an order to the proper parties, being officers or members of the corporation, to admit him to the office. The judgment may require the defendant to deliver to the relator all books, papers, and other things in his custody or control pertaining to the office, and obedience to judgment may be enforced by attachment. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3547.)

§ 16-3548. Recovery of damages from usurper; limitation.

At any time within a year from a judgment in a quo warranto proceeding, the relator may bring an action against the party ousted and recover the damages sustained by the relator by reason of the ousted party's usurpation of the office to which the relator was entitled. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(n); 1973 Ed., § 16-3548.)

CHAPTER 37. REPLEVIN.

Sec.	Sec.
16-3701. Demand prior to action; costs.	16-3709. Notice to officer of intention to move for return; duty of officer; time of motion.
16-3702. Form of complaint.	16-3710. Determination and measure of plaintiff's damages.
16-3703. Affidavit; contents.	16-3711. Judgment for defendant and determination of damages.
16-3704. Undertaking to abide judgment of the court.	16-3712. Verdict where goods are eloiigned.
16-3705. Failure of officer to obtain possession; procedure.	16-3713. Judgment where goods are eloiigned.
16-3706. Publication against defendant.	16-3731 to 16-3740. [Repealed].
16-3707. Default.	
16-3708. Motion for return of property; procedure; objection to sufficiency of security.	

§ 16-3701. Demand prior to action; costs.

In an action of replevin brought to recover personal property to which the plaintiff is entitled, that is alleged to have been wrongfully taken by or to be in the possession of and wrongfully detained by the defendant, it is not necessary to demand possession of the property before bringing the action; but the costs of the action may be awarded as the court orders. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1; 1973 Ed., § 16-3701.)

Cross references. — As to civil jurisdiction of Superior Court, see § 11-921.

As to attachment of property in replevin action, see § 16-517.

Prospective effect of holding chapter unconstitutional. — Even if this chapter vio-

lates due process, any decision so holding should have prospective effect only. *Roebuck v. Walker-Thomas Furn. Co.*, App. D.C., 310 A.2d 845 (1973).

Cited in *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987).

§ 16-3702. Form of complaint.

A complaint in replevin shall be in the following or equivalent form:

"The plaintiff sues the defendant for (wrongly taking and detaining) (unjustly detaining) the plaintiff's goods and chattels, to wit: (describe them) of the value of _____ dollars. And the plaintiff claims that the same be taken from the defendant and delivered to him; or, if they are eloiigned, that he may have judgment of their value and all mesne profits and damages, which he estimates at _____ dollars, besides costs." (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1; 1973 Ed., § 16-3702.)

§ 16-3703. Affidavit; contents.

At the time of filing a complaint in replevin, the plaintiff, his agent, or attorney shall file an affidavit stating that —

(1) according to affiant's information and belief, the plaintiff is entitled to recover possession of chattels proposed to be replevied, being the same described in the complaint;

(2) the defendant has seized and detained or detains the chattels; and

(3) the chattels were not subject to the seizure or detention and were not taken upon a writ of replevin between the parties. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1; 1973 Ed., § 16-3703.)

Failure to comply. — The issuance of writ of replevin was inappropriate where plaintiff failed to file an affidavit pursuant to this sec-

tion, and failed to file a verified complaint pursuant to Super. Ct. Civ. Rule 64-II(b). *Council v. Hogan*, App. D.C., 566 A.2d 1070 (1989).

§ 16-3704. Undertaking to abide judgment of the court.

At the time of filing a complaint in replevin, the plaintiff shall enter into an undertaking by himself or his agent with surety, approved by the clerk, to abide by and perform the judgment of the court. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1; 1973 Ed., § 16-3704.)

Cross references. — As to bonds and undertakings, see § 28-2501 et seq.

§ 16-3705. Failure of officer to obtain possession; procedure.

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has served the defendant with copies of the complaint, affidavit, and summons, but that he could not obtain possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the property and damages for detention, or he may renew the writ in order to obtain possession of the goods and chattels themselves. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1; 1973 Ed., § 16-3705.)

Cross references. — As to attachment of property in replevin action, see § 16-517.

§ 16-3706. Publication against defendant.

When the officer's return of a writ of replevin is that he has taken possession of the goods and chattels sued for, but indicates that personal service on the defendant could not be made, the court, subject to the provisions of section 13-340 as to mailing notice, may order that the defendant appear to the action by a fixed day. The plaintiff shall cause notice of the order to be given by publication in a newspaper published in the District at least three times, the first publication to be at least twenty days before the day fixed for the defendant's appearance. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1; 1973 Ed., § 16-3706.)

Section references. — This section is referred to in § 16-3707.

§ 16-3707. Default.

If, after notice as provided by section 16-3706, the defendant fails to appear, the court may proceed as in case of default after personal service. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1; 1973 Ed., § 16-3707.)

§ 16-3708. Motion for return of property; procedure; objection to sufficiency of security.

(a) On the taking possession of the goods and chattels by the marshal by virtue of a writ of replevin, the defendant may, on one day's notice to the plaintiff or his attorney, move for a return of the property to his possession. Thereupon, the court may inquire into the circumstances and manner of the defendant's obtaining possession of the property, and, if it seems just, may order the property to be returned to the possession of the defendant, to abide the final judgment in the action. The court may require the defendant to enter into an undertaking with surety or sureties, similar to that required of the plaintiff upon the commencement of the action. In such case, the court shall render judgment against the surety or sureties, as well as against the defendant.

(b) When it appears that the possession of the property was forcibly or fraudulently obtained by the defendant, or that the possession, being first in the plaintiff, was procured or retained by the defendant without authority from the plaintiff, the court may refuse to order the return of the property to the possession of the defendant. The defendant may also, on similar notice, object to the sufficiency of the security in the undertaking of the plaintiff, and the court may require additional security, in default of which the property shall be returned to the defendant, but the action may proceed as if the property had not been taken. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1; 1973 Ed., § 16-3708.)

Section references. — This section is referred to in § 16-3709.

§ 16-3709. Notice to officer of intention to move for return; duty of officer; time of motion.

If the defendant in an action of replevin notifies the officer taking possession of the property, in writing, of his intention to make either of the motions specified by section 16-3708, the officer shall retain possession of the property until the motion is disposed of, if the motion is filed and notice given, as provided by section 16-3708, to the plaintiff or his attorney, within two days thereafter. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1; 1973 Ed., § 16-3709.)

§ 16-3710. Determination and measure of plaintiff's damages.

Whether, in an action of replevin, the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court, or he makes default after personal service or publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where jury trial had been waived or there is no issue of fact, and the damages shall be the full value of the goods, if elojned by the defendant, including, in every case, the loss

sustained by the plaintiff by reason of the detention, and the judgment shall be rendered for the plaintiff accordingly. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1; 1973 Ed., § 16-3710.)

Cited in *Bay Gen. Indus., Inc. v. Johnson*, App. D.C., 418 A.2d 1050 (1980).

§ 16-3711. Judgment for defendant and determination of damages.

When, in an action of replevin, the issue is found for the defendant, or the plaintiff dismisses or fails to prosecute his suit, or judgment is rendered against the plaintiff on proper motion under rules of court, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages for their detention, or, on failure, that the defendant recover against the plaintiff and his surety the damages sustained by him. The damages shall be assessed by the jury trying the issue; or, where jury trial had been waived, or judgment is rendered against the plaintiff prior to trial on proper motion under rules of court, or he dismisses or fails to prosecute his suit, by a jury of inquest. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1; 1973 Ed., § 16-3711.)

Ex parte judgment without notice to unsuccessful party constitutes error. — The entry of judgment on the issue of damages after an ex parte hearing without notice being given to the unsuccessful party is error. *Streule v. Gulf Fin. Corp.*, App. D.C., 289 A.2d 15 (1972).

Measure of damages. — Where the plaintiff fails to deliver the goods back to the defendant, the amount of damages are not necessarily measured by the unpaid balance of the defendant's lien against the goods, as their

value might not equal that amount. *Streule v. Gulf Fin. Corp.*, App. D.C., 265 A.2d 298 (1970).

In the event the goods are returned to the defendant, absent any additional consequential damage, the measure of damages would be the value of the goods at the time they were seized, less their value when returned; however, in the event they are not returned, measure of damages would be the value of the goods when seized. *Streule v. Gulf Fin. Corp.*, App. D.C., 289 A.2d 15 (1972).

§ 16-3712. Verdict where goods are eloigned.

If the defendant in an action of replevin has eloigned the things sued for, the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1; 1973 Ed., § 16-3712.)

Cited in *Bay Gen. Indus., Inc. v. Johnson*, App. D.C., 418 A.2d 1050 (1980).

§ 16-3713. Judgment where goods are eloigned.

The judgment in a case where the defendant has eloigned the goods sued for, shall be that the plaintiff recover against the defendant the value of the goods as found and the damages so assessed, to be discharged by the return of the things, within ten days after the judgment, with damages for detention, which the jury shall also assess. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1; 1973 Ed., § 16-3713.)

§§ 16-3731 to 16-3740. Jurisdiction; form of complaint; affidavit; contents; undertaking to abide judgment of the court; failure of officer to obtain possession; publication against defendant; default; retention of property by marshal; sufficiency of undertaking, quashing writ, and return of property; motion for return of property; procedure; objection to sufficiency of security; determination and measure of plaintiff's damages; judgment for defendant and determination of damages.

Repealed. July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(o)(1).

CHAPTER 39. SMALL CLAIMS AND CONCILIATION PROCEDURE
IN SUPERIOR COURT.

Sec.

- 16-3901. Practice; applicability of other laws and rules of court.
- 16-3902. Commencement of action; form of statement; preparation by clerk; notice and service; costs; default; memorandum to plaintiff.
- 16-3903. Fees and costs; waiver.
- 16-3904. Set-off or counterclaim; pleading; retention of jurisdiction.
- 16-3905. Jury trial; demand; assignment to regular branch.

Sec.

- 16-3906. Pre-trial settlement; trial; procedure; default; dismissal or nonsuit; other disposition.
- 16-3907. Judgment; stay; installment payments; enforcement.
- 16-3908. Judgment for wages; oral examination; payment.
- 16-3909. Award of costs.
- 16-3910. Other rights of judgment creditor.

§ 16-3901. Practice; applicability of other laws and rules of court.

All provisions of law relating to the Superior Court of the District of Columbia and the rules of the court apply to the Small Claims and Conciliation Branch of the court as far as they may be applicable and are not in conflict with this chapter or chapter 13 of title 11. In case of conflict, this chapter and chapter 13 of title 11 control. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(2); 1973 Ed., § 16-3901.)

§ 16-3902. Commencement of action; form of statement; preparation by clerk; notice and service; costs; default; memorandum to plaintiff.

(a) Actions shall be commenced in the Small Claims and Conciliation Branch by the filing of a statement of claim, in concise form and free of technicalities. The plaintiff or his agent shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his signature thereto. The clerk of the Branch shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the Branch, but his services are not available to a corporation, partnership, or association, in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by the United States marshal, as provided by law, or by registered mail or by certified mail with return receipt, or by a person not a party to or otherwise interested in the action especially authorized by the Clerk of the Small Claims and Conciliation Branch or appointed by the judge for that purpose.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall inclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records

the day and hour of mailing. When the receipt is returned, the clerk shall attach it to the original statement of claim, and it constitutes prima facie evidence of service upon the defendant.

(c) When notice is served by a private individual, as provided by subsection (a) of this section, he shall make proof of service by affidavit before the clerk, showing the time and place of the service.

(d) When notice is served by the marshal, or by registered mail or by certified mail, the actual cost of service is taxable as costs. When notice is served by an individual, the cost of service, if any, is not taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SMALL CLAIMS AND CONCILIATION BRANCH

(Location of room in
courthouse)

(Address of
court)

Washington, D.C. _____

Plaintiff _____

Address _____

No. _____

vs. _____

Defendant

STATEMENT OF CLAIM

(Here the plaintiff, or at his request the clerk, will insert a statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:) DISTRICT OF COLUMBIA, ss: _____ being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense. _____ Plaintiff (or agent)

Subscribed and sworn to before me this _____ days of _____, 19____. _____ Clerk (or notary public)

NOTICE

To: _____

Defendant

Home address

Business address

You are hereby notified that _____ has made a claim and is requesting judgment against you in the sum of _____ dollars (\$____), as shown by the foregoing statement. The Court will hold a hearing upon this claim on _____ at ____m. in the Small Claims and Conciliation Branch (address of Court).

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

[SEAL] _____ Clerk of the Small Claims and Conciliation Branch, Superior Court of the District of Columbia.

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a memorandum of the day and hour set for the hearing, not less than 5 nor more than 30 days from the date of the filing of the action. Where, in a case controlled by another statute, a greater or lesser time for hearing is specified by the other statute, that specified time is controlling. All actions filed in the Branch shall be made returnable therein.

(h) Where the defendant is the District of Columbia or an officer or agency thereof, the Clerk shall schedule the hearing for a day that is not less than 30 days from the date of the filing of the action, service of a copy of the action on the Corporation Counsel to be completed within 15 days of filing. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(3); 1973 Ed., § 16-3902; Mar. 21, 1995, D.C. Law 10-230, § 2, 42 DCR 11.)

Cross references. — As to certified mail return receipts as prima facie evidence of delivery, see § 14-506.

Section references. — This section is referred to in § 16-3906.

Effect of amendments. — D.C. Law 10-230 inserted “authorized by the Clerk of the Small Claims and Conciliation Branch or” in the last sentence of (a); substituted “30” for “15” in (g); and added (h).

Legislative history of Law 10-230. — Law 10-230, the “Small Claims Service of Process Act of 1994,” was introduced in Council and

assigned Bill No. 10-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 6, 1994, it was assigned Act No. 10-371 and transmitted to both Houses of Congress for its review. D.C. Law 10-230 became effective on March 21, 1995.

Cited in *Leiken v. Wilson*, App. D.C., 445 A.2d 993 (1982); *Shipley v. Steadley*, 119 WLR 1577 (Super. Ct. 1991).

§ 16-3903. Fees and costs; waiver.

Fees for processing actions in the Small Claims Branch shall be set as the court prescribes. The judge sitting in the Branch may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the Branch shall be “Prepayment of costs waived,” or “Costs waived.” The

term “pauper” or “in forma pauperis” may not be employed in the Branch. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the Branch while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the Branch. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(4); 1973 Ed., § 16-3903; July 23, 1992, D.C. Law 9-134, § 104, 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 104, 39 DCR 4895.)

Cross references. — As to fees and costs, see § 15-701 et seq.

Legislative history of Law 9-134. — Law 9-134, the “Omnibus Budget Support Temporary Act of 1992,” was introduced in Council and assigned Bill No. 9-485. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Approved without the signature of the Mayor on May 29, 1992, it was assigned Act No. 9-219 and transmitted to both Houses of Congress for its review. D.C. Law 9-134 became effective on July 23, 1992.

Legislative history of Law 9-145. — Law 9-145, the “Omnibus Budget Support Act of 1992,” was introduced in Council and assigned Bill No. 9-222, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 12, 1992, and June 2, 1992, respectively. Approved without the signature of the Mayor on June 22, 1992, it was assigned Act No. 9-225 and transmitted to both Houses of Congress for its review. D.C. Law 9-145 became effective on September 10, 1992.

§ 16-3904. Set-off or counterclaim; pleading; retention of jurisdiction.

If the defendant in an action pursuant to this chapter, asserts a set-off or counterclaim, the judge may require a formal plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims and Conciliation Branch, as provided by section 11-1321, but within the jurisdiction of the Superior Court, the action shall nevertheless remain in the Branch and be tried therein in its entirety. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(5); 1973 Ed., § 16-3904.)

Jurisdiction of Small Claims and Conciliation Branch. — The Small Claims and Conciliation Branch does not have jurisdiction to entertain cross-claim in excess of the amount specified in § 11-1321. *McCray v. McGee*, App. D.C., 504 A.2d 1128 (1986).

The jurisdictional limitation does not apply

to set-offs and counterclaims under § 11-1321 and this section. *McCray v. McGee*, App. D.C., 504 A.2d 1128 (1986).

Cited in *Local 31, Nat'l Ass'n of Broadcast Employees v. Timberlake*, App. D.C., 409 A.2d 629 (1979).

§ 16-3905. Jury trial; demand; assignment to regular branch.

In a case filed or pending in the Small Claims and Conciliation Branch in which a party entitled to a trial by jury files a demand therefor, the case shall be assigned to and tried in the regular branch of the civil division of the Court under the procedure provided for jury trials. (Dec. 23, 1963, 77 Stat. 610, Pub.

L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(4); 1973 Ed., § 16-3905.)

Cited in *White v. Brown*, 116 WLR 857 (Super. Ct. 1988).

§ 16-3906. Pre-trial settlement; trial; procedure; default; dismissal or nonsuit; other disposition.

(a) On the return day specified by subsection (g) of section 16-3902, or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case pursuant to this chapter, the judge shall make an earnest effort to settle the controversy by conciliation. If he fails to induce the parties to settle their differences without a trial, he shall proceed with the hearing on the merits pursuant to subsection (b) of this section.

(b) The parties and witnesses shall be sworn. The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.

(c) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by section 16-3902(f), or under rules of court, or on ex-parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to a trial on the merits, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed for want of prosecution, or make any other just and proper disposition thereof, as justice requires. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1; 1973 Ed., § 16-3906.)

Conciliation efforts mandatory. — Conciliation efforts in Small Claims Branch are mandatory, and settlements are strongly favored. *Leiken v. Wilson*, App. D.C., 445 A.2d 993 (1982).

Summary judgment. — It is immaterial whether a party formally moves for summary

judgment or is awarded judgment by the court sua sponte, since informal procedures govern and the relevant inquiry is whether "substantial justice" is achieved. *Eytan v. Bach*, App. D.C., 374 A.2d 879 (1977).

Cited in *Shipley v. Steadley*, 119 WLR 1577 (Super. Ct. 1991).

§ 16-3907. Judgment; stay; installment payments; enforcement.

When judgment is to be rendered in an action pursuant to this chapter and the party against whom it is to be entered requests it, the judge shall inquire fully into his earnings and financial status and may stay the entry of judgment, and stay execution, except in cases involving wage claims, and order partial payments in such amounts, over such periods, and upon such terms, as seems just in the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that the party has failed to meet an installment payment without just excuse, the

stay of execution shall be vacated. When a stay of execution has not been ordered or when a stay of execution has been vacated as provided by this section, the party in whose favor the judgment has been entered may avail himself of all remedies otherwise available in the Superior Court of the District of Columbia for the enforcement of the judgment. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(6); 1973 Ed., § 16-3907.)

§ 16-3908. Judgment for wages; oral examination; payment.

When a judgment rendered in an action pursuant to this chapter is founded in whole or in part on a claim for wages or personal services, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1; 1973 Ed., § 16-3908.)

§ 16-3909. Award of costs.

In the action pursuant to this chapter, the award of costs is in the discretion of the judge, who may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1; 1973 Ed., § 16-3909.)

§ 16-3910. Other rights of judgment creditor.

Except as otherwise provided by this chapter or the rules of the court, a party obtaining a judgment in the Small Claims and Conciliation Branch is entitled to the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 145(p)(7); 1973 Ed., § 16-3910.)

CHAPTER 41. SURETIES.

Sec.

16-4101. Relief from suretyship; counter security, or bond; removal of officer or fiduciary from office.

Sec.

16-4102. Subrogation of surety satisfying judgment.

§ 16-4101. Relief from suretyship; counter security, or bond; removal of officer or fiduciary from office.

When the surety, or his personal representatives, of an officer, commissioner, receiver, or trustee appointed under a decree of court and required to give bond apprehends himself to be in danger of suffering from the suretyship, and petitions the court to be relieved from the suretyship, or that the court require the officer, commissioner, receiver, or trustee to give counter security, the court may, on reasonable notice to the trustee or other officer, require him to give counter security or to give a new bond in the same manner as if none had been given by him. If he fails to do so by a day named, the court may remove him from his office or trust and appoint a new trustee or other officer in his stead to complete the duties of his office of trust, and may thereupon, order him to deliver over to his successor all the trust property, including moneys, books, papers, bonds, notes, and evidences of debt, and may compel compliance with the order by attachment. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88-241, § 1; 1973 Ed., § 16-4101.)

Cross references. — As to counter security by guardian, see § 21-118.

As to bonds and undertakings, see § 28-2501 et seq.

§ 16-4102. Subrogation of surety satisfying judgment.

Where a person recovers a judgment or money decree against the principal debtor and a surety or indorser, and the judgment is satisfied by the surety or indorser, the latter may have the judgment or money decree entered by the clerk to his use and have execution in his own name against the principal, and where a judgment or money decree is rendered against several sureties and one of them satisfies the whole debt, the surety satisfying the judgment may have the judgment or decree entered to his use, have execution against each of the other sureties in the judgment or decree for a proportionate part of the debt so paid by him. On the motion of the surety so paying the entire debt and notice to the other sureties, the court may determine for what amount execution shall issue against each of the other sureties. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88-241, § 1; 1973 Ed., § 16-4102.)

Cross references. — As to setoff by counterclaim in action against principal and his sureties, see § 13-503.

Cited in Rab v. Safeco Ins. Co. of Am., App. D.C., 556 A.2d 1072 (1989).

CHAPTER 43. ARBITRATION.

Sec.

- 16-4301. Validity of arbitration agreement.
- 16-4302. Proceedings to compel or stay arbitration.
- 16-4303. Appointment of arbitrators by Court.
- 16-4304. Majority action by arbitrators.
- 16-4305. Hearing.
- 16-4306. Representation by attorney.
- 16-4307. Witnesses, subpoenas, depositions.
- 16-4308. Award.
- 16-4309. Change of award by arbitrators.
- 16-4310. Fees and expenses of arbitration.

Sec.

- 16-4311. Vacating an award.
- 16-4312. Modification or correction of award.
- 16-4313. Judgment or decree on award.
- 16-4314. Docketing of judgments.
- 16-4315. Applications to Court.
- 16-4316. Court.
- 16-4317. Appeals.
- 16-4318. Prospective applicability to agreements.
- 16-4319. Construction.

§ 16-4301. Validity of arbitration agreement.

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives. (1973 Ed., T. 16, Appx., § 2; Apr. 7, 1977, D.C. Law 1-117, § 2, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in §§ 1-605.2 and 16-4302.

Legislative history of Law 1-117. — Law 1-117, the "Uniform Arbitration Act," was introduced in Council and assigned Bill No. 1-140, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on November 23, 1976, and December 7, 1976, respectively. Enacted without signature by the Mayor on January 13, 1977, it was assigned Act No. 1-209 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-85. — Law 3-85, the "Enacted Titles Numbering and Amendment Act of 1980," was introduced in Council and assigned Bill No. 3-296, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 20, 1980, and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-202 and transmitted to both Houses of Congress for its review.

Statute of limitations. — Since this Act does not contain an explicit statute of limitations for actions to confirm arbitration awards, therefore, courts look to the D.C. Code's general section on limitation periods (§ 12-301 et seq.). *Consolidate Rail Corp. v. Delaware & H. Ry.*, 867 F. Supp. 25 (D.D.C. 1994).

Court intervention. — The authority of courts to interfere in contractually mandated arbitration proceedings is governed by arbitra-

tion statutes. *Pisciotta v. Shearson Lehman Bros.*, App. D.C., 629 A.2d 520 (1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 690, 126 L. Ed. 2d 657 (1994).

Agreement required. — The D.C. Uniform Arbitration Act applies only when the parties themselves agree in writing, usually before litigation even begins, to submit a dispute to outside arbitration rather than to resort to the court-sponsored program. *Howard & Hoffman, Inc. v. Hartford Accident & Indem. Co.*, App. D.C., 634 A.2d 1214 (1993).

Judicial review. — Because each party must hold a shoulder before the arbitrator may don the cloak of authority under the District of Columbia Uniform Arbitration Act, any judicial determination of arbitrability is necessarily *de novo*. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

The decision of the arbitrator may, of course, influence a reviewing court's determination to the extent that its reasoning merits; in other words, it may well be persuasive, but it is not due legal deference. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

Cited in American Fed'n of Gov't Employees v. Koczak, App. D.C., 439 A.2d 478 (1981); *Kaushiva v. Local 2142*, 110 WLR 2701 (Super. Ct. 1982); *Walter A. Brown, Inc. v. Moylan*, App. D.C., 509 A.2d 98 (1986); *American Fed'n of State v. District of Columbia Bd. of Educ.*, 114 WLR 2113 (Super. Ct. 1986); *Shaff v. Skahill*, App. D.C., 617 A.2d 960 (1992); *Communica-*

tions Workers v. AT & T, 10 F.3d 887 (D.C. Cir. 1993).

§ 16-4302. Proceedings to compel or stay arbitration.

(a) On application of a party showing an agreement described in section 16-4301, and the opposing party's refusal to arbitrate, the Court shall order the parties to proceed with arbitration, but if opposing party denies the existence of the agreement to arbitrate the Court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

(b) On application, the Court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the Court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a Court other than the Superior Court of the District of Columbia, having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefore has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown. (1973 Ed., T. 16, Appx., § 3; Apr. 7, 1977, D.C. Law 1-117, § 3, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in §§ 1-605.2 and 16-4317.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Federal court decisions applying federal Arbitration Act. — Federal court decisions construing and applying the federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia arbitration act, so long as there is no material difference in the statutory language between the 2 acts. *Hercules & Co. v. Beltway Carpet Serv., Inc.*, App. D.C., 592 A.2d 1069 (1991).

The district arbitration provisions are similar to the United States Arbitration Act, and the federal courts' application of the federal statute is instructive as to how the district should construe its own. *Hercules & Co. v.*

Shama Restaurant Corp., App. D.C., 613 A.2d 916 (1992).

Statute of limitations. — An action under the Labor Management Relations Act to compel arbitration was considered an action in contract, its limitation period therefore being governed by § 12-301(7). *Communications Workers v. AT & T*, 10 F.3d 887 (D.C. Cir. 1993).

Waiver. — Mere "participation" in a lawsuit is probably not enough to support a finding of waiver. *Hercules & Co. v. Beltway Carpet Serv., Inc.*, App. D.C., 592 A.2d 1069 (1991).

A party that participates in an arbitration over its objection is not barred from raising that objection after the award. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

The filing of an answer to avoid the risk of a default judgment in no way constitutes the degree of "active participation" in litigation necessary to establish waiver. *Hercules & Co. v. Beltway Carpet Serv., Inc.*, App. D.C., 592 A.2d 1069 (1991).

The trial judge's conclusion that plaintiff's filing of a motion for summary judgment on a nonarbitrable count of the complaint constituted a waiver of its right to demand arbitration, was erroneous. *Hercules & Co. v. Beltway Carpet Serv., Inc.*, App. D.C., 592 A.2d 1069 (1991).

Because arbitration is highly favored, a court should be cautious in concluding that a party to an agreement which includes an arbitration clause has waived his or her right to arbitration. *Hercules & Co. v. Beltway Carpet Serv., Inc.*, App. D.C., 592 A.2d 1069 (1991).

A party's continued participation in the arbitration after the question arbitrability was determined adversely to them does not constitute a waiver of the objection. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

Motion to dismiss breach of contract claim. — Where plaintiff made a motion to dismiss claim of breach of contract, the motion should have been seen as a motion to compel arbitration, and its denial was immediately appealable under § 16-4317. *Hercules & Co. v. Beltway Carpet Serv., Inc.*, App. D.C., 592 A.2d 1069 (1991).

A motion seeking dismissal of a complaint on the ground that a contract requires arbitration of the underlying dispute must be seen as an application for compelled arbitration. *Friend v. Friend*, App. D.C., 609 A.2d 1137 (1992).

Procedure for resolving denial of existence of agreement to arbitrate. — The procedure for resolving denials of the existence of an agreement to arbitrate under the Arbitration Act mirrors the summary judgment procedure. *Haynes v. Kuder*, App. D.C., 591 A.2d 1286 (1991).

Claims of fraud. — Claims of fraudulent inducement of the agreement containing an arbitration clause are among those determined under § 3 of the Uniform Arbitration Act, codified in this section, as such claims dispute the existence of an agreement to arbitrate. *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

Fraud in the context of arbitration awards must be established by clear and convincing evidence, and the party alleging fraud as a ground on which to deny confirmation has the burden of proof on the issue. *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

Where the issue of fraudulent inducement was barred in preaward proceedings commenced under this section, such proceedings were not governed by the 90-day time limit under § 16-4311. *Hercules & Co. v. Shama Restaurant Corp.*, App. D.C., 613 A.2d 916 (1992).

Where a party to a contract containing a broad arbitration clause claims fraud in the inducement both of the arbitration clause itself and of the entire contract containing the arbitration clause, the court is to consider only the

former claim. If the claim of fraud in the inducement of the arbitration clause proves meritless, then the court is foreclosed from considering the question of fraud in the inducement of the contract as a whole, but must leave that issue to be decided by the arbitrators. This "bifurcated" proceeding is both obvious from and inherent in the structure and content of this section. *Hercules & Co. v. Shama Restaurant Corp.*, App. D.C., 613 A.2d 916 (1992).

Where defendant moved to stay a lawsuit, and plaintiff filed a memorandum in opposition alleging that an arbitration clause had been fraudulently induced and was therefore unenforceable, defendant was put on timely notice of plaintiff's objections to the arbitration clause so as to preserve those objections for appeal. *Hercules & Co. v. Shama Restaurant Corp.*, App. D.C., 613 A.2d 916 (1992).

Where trial judge's decision to dismiss with prejudice plaintiff's claim that arbitration clause had been fraudulently induced was based on submitted pleadings, appellate court's proper analogue or review of the dismissal was not Super. Ct. Civ. Rule 56, but Rules 12(b)(6) and 12(c). *Hercules & Co. v. Shama Restaurant Corp.*, App. D.C., 613 A.2d 916 (1992).

Question of law. — The question of whether an issue is arbitrable is one of law, and a court must make its own determination on the issue. *Poire v. Kaplan*, App. D.C., 491 A.2d 529 (1985).

Strong legal presumption favors arbitrability of labor disputes. *Washington-Baltimore Newspaper Guild v. Washington Post Co.*, 442 F. Supp. 1060 (D.D.C. 1977).

Proceeding under rule of court. — If during the course of litigation the parties agree to arbitrate, a court may stay litigation and order arbitration to proceed under rule of court. *Poire v. Kaplan*, App. D.C., 491 A.2d 529 (1985).

When a dispute subject to arbitration is before the court this section contemplates that the court shall stay judicial proceedings pending arbitration and does not mention dismissal as an appropriate remedy. *Weatherly Cellaphonics Partners v. Hueber*, 726 F. Supp. 319 (D.D.C. 1989).

This section favors arbitral rather than judicial resolution of disputes when parties have entered into a contract with an arbitration clause. *Weatherly Cellaphonics Partners v. Hueber*, 726 F. Supp. 319 (D.D.C. 1989).

Construing arbitration clause. — Court will not unduly restrict the scope of arbitration clause merely because it is short and to the point. *Weatherly Cellaphonics Partners v. Hueber*, 726 F. Supp. 319 (D.D.C. 1989).

Agreement between attorney and client for services sufficiently apprised client that she was relinquishing her right to sue in court, and hence receive a jury trial, on any claim she might have against the attorney for inadequate representation, and therefore, an evidentiary

§ 16-4303 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

hearing was unnecessary. *Haynes v. Kuder*, App. D.C., 591 A.2d 1286 (1991).

Judicial review. — Because each party must hold a shoulder before the arbitrator may don the cloak of authority under the District of Columbia Uniform Arbitration Act, any judicial determination of arbitrability is necessarily *de novo*. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

The decision of the arbitrator may, of course,

influence a reviewing court's determination to the extent that its reasoning merits; in other words, it may well be persuasive, but it is not due legal deference. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

Cited in *American Fed'n of Gov't Employees v. Koczak*, App. D.C., 439 A.2d 478 (1981); *American Fed. of Gov't Employees v. District of Columbia*, App. D.C., 563 A.2d 361 (1989).

§ 16-4303. Appointment of arbitrators by Court.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the Court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (1973 Ed., T. 16, Appx., § 4; Apr. 7, 1977, D.C. Law 1-117, § 4, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in §§ 1-605.2 and 16-4311.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Cited in *American Fed'n of Gov't Employees v. Koczak*, App. D.C., 439 A.2d 478 (1981).

§ 16-4304. Majority action by arbitrators.

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter. (1973 Ed., T. 16, Appx., § 5; Apr. 7, 1977, D.C. Law 1-117, § 5, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

§ 16-4305. Hearing.

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives any defect of such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to

appear. The Court on application may direct the arbitrators to proceed promptly with the hearing and determination of controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy. (1973 Ed., T. 16, Appx., § 6; Apr. 7, 1977, D.C. Law 1-117, § 6, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Extension not warranted. — Even if counsel's motion could have been construed as a request that a scheduled hearing be delayed, the motion did not present the arbitration au-

thority with the "good cause" that warrants an extension under this chapter, where counsel gave no specific reason why he would be unable to attend the hearing but simply renewed his contention that the requested extension had been improperly denied. *Capozio v. American Arbitration Ass'n*, App. D.C., 490 A.2d 611 (1985).

Cited in *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

§ 16-4306. Representation by attorney.

A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective. (1973 Ed., T. 16, Appx., § 7; Apr. 7, 1977, D.C. Law 1-117, § 7, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

§ 16-4307. Witnesses, subpoenas, depositions.

(a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths and affirmations and take acknowledgments. Subpoenas so issued shall be served, and upon application to the Court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit written interrogatories and prehearing documents to be obtained and/or a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the Court. (1973 Ed., T. 16, Appx., § 8; Apr. 7, 1977, D.C. Law 1-117, § 8, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

§ 16-4308. Award.

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, return receipt requested, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the Court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him. (1973 Ed., T. 16, Appx., § 9; Apr. 7, 1977, D.C. Law 1-117, § 9, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Cited in American Fed'n of State v. District

of Columbia Bd. of Educ., 114 WLR 2113 (Super. Ct. 1986).

§ 16-4309. Change of award by arbitrators.

On application of a party or, if an application of the Court is pending under sections 16-4310, 16-4311, or 16-4312 on submission to the arbitrators by the Court under such conditions as the Court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of section 16-4312, or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of §§ 16-4310, 16-4311 and 16-4312. (1973 Ed., T. 16, Appx., § 10; Apr. 7, 1977, D.C. Law 1-117, § 10, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900; Apr. 30, 1988, D.C. Law 7-104, § 4(u), 35 DCR 147.)

Section references. — This section is referred to in § 1-605.2.

Effect of amendments. — D.C. Law 7-104 substituted "section 13" for "section 14" in the first sentence and "sections 11, 12 and 13" for "sections 12, 13 and 14" in the fourth sentence.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Cited in *Kaushiva v. Local 2142*, 110 WLR 2701 (Super. Ct. 1982); *Tung v. W.T. Cabe & Co.*, App. D.C., 492 A.2d 267 (1985).

§ 16-4310. Fees and expenses of arbitration.

Unless otherwise provided in the agreement to arbitrate, the arbitrator's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the Award. Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the Court shall proceed as provided in sections 16-4312 and 16-4313. (1973 Ed., T. 16, Appx., § 11; Apr. 7, 1977, D.C. Law 1-117, § 11, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Timeliness of motion to enforce arbitration award. — A motion to enforce an arbitration award may be brought after the time limit on a motion to alter or vacate has expired. *Local 26, Int'l Bhd. of Elec. Workers v. CWS Elec.*, 669 F. Supp. 495 (D.D.C. 1986).

Cited in *American Fed'n of Gov't Employees v. Koczak*, App. D.C., 439 A.2d 478 (1981); *Kaushiva v. Local 2142*, 110 WLR 2701 (Super. Ct. 1982); *Poire v. Kaplan*, App. D.C., 491 A.2d 529 (1985); *Walter A. Brown, Inc. v. Moylan*, App. D.C., 509 A.2d 98 (1986); *Haynes v. Kuder*, App. D.C., 591 A.2d 1286 (1991); *Shaff v. Skahill*, App. D.C., 617 A.2d 960 (1992); *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

§ 16-4311. Vacating an award.

(a) Upon application of a party, the Court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 16-4315, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 16-4312 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a Court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of subsection (a) of this section the Court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the Court in accordance with section 16-4303, or if the award is vacated on grounds set forth in clauses (3) and (4) of subsection (a) of this section the Court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 16-4303. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the Court shall confirm the award. (1973 Ed., T. 16, Appx., § 12; Apr. 7, 1977, D.C. Law 1-117, § 12, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in §§ 1-605.2 and 16-4309.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Rules of evidence. — Although arbitrator is not bound by the legal rules of evidence, he is free to conform to them and to exclude evidence accordingly. *Wayne Insulation Co. v. Hex Corp.*, App. D.C., 534 A.2d 1279 (1987).

Grounds for vacating award. — Grounds for vacating an arbitration award under subsections (a)(3) and (a)(5) include whether the arbitrator decided issues in excess of his authority under the arbitration clause of the contract, and whether contractor individually was not a party to the contract or had not agreed to arbitration. *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

Objection to arbitrability. — A party that participates in an arbitration over its objection is not barred from raising that objection after the award. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

A party's continued participation in the arbitration after the question arbitrability was determined adversely to them does not constitute a waiver of the objection. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

Ambiguity in arbitration award. — Ambiguity in arbitration award would not serve as basis for court to vacate or modify the award. *Spencer v. Spencer*, App. D.C., 494 A.2d 1279 (1985).

Award not vacated for refusal of arbitrator to schedule conference. — This chapter provides no basis for vacation of an award on the grounds that the arbitrator refused to schedule a conference requested by one party to the arbitration. *Capozio v. American Arbitration Ass'n*, App. D.C., 490 A.2d 611 (1985).

Allegations of misconduct. — Allegations of misconduct in the arbitration process do not

make out an independent claim for which a court may award damages. *Pisciotta v. Shearson Lehman Bros.*, App. D.C., 629 A.2d 520 (1993), cert. denied, 510 U.S. 1044, 114 S. Ct. 690, 126 L. Ed. 2d 657 (1994).

Arbitrator's award not vacated for errors of law or fact. — Where a party has not sought to vacate an arbitrator's award on statutorily-recognized grounds pursuant to this section, courts cannot set aside such awards for errors of law or fact made by the arbitrator. *Shaff v. Skahill*, App. D.C., 617 A.2d 960 (1992).

Limitations of actions. — The limitations period of subsection (b) begins to run whenever review under the grievance-arbitration mechanism is final. *Ogunloye v. John Hancock Mut. Life Ins. Co.*, 545 F. Supp. 1118 (D.D.C. 1982), aff'd, 713 F.2d 865 (D.C. Cir. 1983); *Tung v. W.T. Cabe & Co.*, App. D.C., 492 A.2d 267 (1985).

The state statute of limitations for actions challenging arbitration awards, rather than the limitations period for simple contract actions, is the statute of limitations applicable in a federal diversity case to actions alleging violations of a collective bargaining agreement, where the grievance-arbitration mechanism of the collective bargaining agreement has been utilized. This limitations period controls even if the grievance is not taken to arbitration. *Ogunloye v. John Hancock Mut. Life Ins. Co.*, 545 F. Supp. 1118 (D.D.C. 1982), aff'd, 713 F.2d 865 (D.C. Cir. 1983); *Orange v. Safeway Stores, Inc.*, 556 F. Supp. 510 (D.D.C. 1983), aff'd, 725 F.2d 126 (D.C. Cir. 1984).

Failure to argue grounds for vacation of award within 90-day statutory limit of subsection (b) waives any right to challenge award. *Walter A. Brown, Inc. v. Moylan*, App. D.C., 509 A.2d 98 (1986).

The filing of a petition to confirm does not extend the 90-day statutory period within which a request for vacation of the award must be presented. *Walter A. Brown, Inc. v. Moylan*, App. D.C., 509 A.2d 98 (1986).

Failure to file application within 90-day period under subsection (b). — See Jaffe v. Nocera, App. D.C., 493 A.2d 1003 (1985).

Reasons for vacating award. — There are 2 ways in which party may present reasons for vacating an award: (1) By filing a petition with the trial court to vacate the award; or (2) by raising reasons supporting vacation in an answer to the other party's petition to confirm. *Walter A. Brown, Inc. v. Moylan*, App. D.C., 509 A.2d 98 (1986).

Federal arbitration law. — Federal arbitration law applies to contracts evidencing a transaction involving commerce only. *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

Time to file. — A party seeking to modify or set aside an arbitration award under this section or § 16-4312 is required to file an application urging grounds for such relief within 90 days of the award to ensure that a decision by an arbitrator becomes final without undue delay. *Hercules & Co. v. Shama Restaurant Corp.*, App. D.C., 613 A.2d 916 (1992).

Claims of fraud. — Claims of fraudulent inducement of a contract may be asserted in a properly filed application to vacate the arbitration award. *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

Fraud in the context of arbitration awards must be established by clear and convincing evidence, and the party alleging fraud as a ground on which to deny confirmation has the burden of proof on the issue. *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

Paragraphs (a)(3) and (a)(5) furnish a proper basis on which to oppose confirmation of an arbitrator's award on the ground that the settlement agreement as a whole stemmed from asserted fraudulent inducement. *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

Where the issue of fraudulent inducement was barred in preaward proceedings commenced under § 16-4302, such proceedings were not governed by the 90-day time limit under this section. *Hercules & Co. v. Shama Restaurant Corp.*, App. D.C., 613 A.2d 916 (1992).

Scope of review. — Judicial review of an arbitration award is limited to the five grounds provided in subsection (a). *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

An arbitration award must be upheld if the contract's arbitration clause is "susceptible of an interpretation" that covers the disputes put before the arbitrator; this is a matter to be determined by the court de novo. *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

Because each party must hold a shoulder before the arbitrator may don the cloak of authority under the District of Columbia Uniform Arbitration Act, any judicial determina-

tion of arbitrability is necessarily de novo. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

Deference not given to arbitrator's decision. — The decision of the arbitrator may, of course, influence a reviewing court's determination to the extent that its reasoning merits; in other words, it may well be persuasive, but it is not due legal deference. *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

Reasons for denying motion to confirm. — The Court of Appeals did not sustain the trial court's refusal to confirm an arbitration award where the trial judge gave no reasons for denying the motion to confirm. *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

Arbitrator's decision predicated on error. — There was no basis for concluding that the arbitrator's decision was predicated on an error so egregious that bias, corruption, infidelity to the law, or even irrationality, could reasonably be inferred. *Celtech, Inc. v. Broumand*, App. D.C., 584 A.2d 1257 (1991).

Confirmation effected by dismissal of motion to vacate. — Trial court's order finally determined the rights and obligations of the parties and was final for purposes of appeal, where although the order did not specifically state that it "confirmed" the award pursuant to subsection (d), that was the clear effect of its dismissal of a motion to vacate the award. *Tung v. W.T. Cabe & Co.*, App. D.C., 492 A.2d 267 (1985).

Trial court did not err in refusing to vacate. — The trial court did not err in refusing to vacate the award on the basis that the claimant obtained it through ex parte contact with the arbitrator, where the hearing was held ex parte only because one party and her counsel declined to be present. *Capozio v. American Arbitration Ass'n*, App. D.C., 490 A.2d 611 (1985).

Motions judge erred in denying motion to confirm arbitrator's award. — Since no statutory grounds were alleged by appellee to vacate an arbitrator's award, the motions judge erred by denying appellant's motion to confirm the award. *Shaff v. Skahill*, App. D.C., 617 A.2d 960 (1992).

Whether party agreed to arbitrate. — Contractor, although not expressly named in a contract as an individual party to it, may have been found a proper party to the arbitration and held individually liable if, as plaintiffs contended, contractor and contracting company were one and the same personality; if plaintiffs could have shown that the corporation was a mere facade then contractor would have not been protected by the corporate veil. *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

Cited in American Fed'n of Gov't Employees v. Koczak, App. D.C., 439 A.2d 478 (1981);

Kaushiva v. Local 2142, 110 WLR 2701 (Super. Ct. 1982); *Poire v. Kaplan*, App. D.C., 491 A.2d 529 (1985); *Local 26, Int'l Bhd. of Elec. Workers v. CWS Elec.*, 669 F. Supp. 495 (D.D.C. 1986); *Murrell v. Criterion Ins. Co.*, App. D.C., 551

A.2d 95 (1988); *Haynes v. Kuder*, App. D.C., 591 A.2d 1286 (1991); *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995); *Cellular Radio Corp. v. OKI Am., Inc.*, App. D.C., 664 A.2d 357 (1995).

§ 16-4312. Modification or correction of award.

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the Court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the Court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the Court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award. (1973 Ed., T. 16, Appx., § 13; Apr. 7, 1977, D.C. Law 1-117, § 13, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900.)

Section references. — This section is referred to in §§ 1-605.2, 16-4309, 16-4310, and 16-4311.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Time to file. — A party seeking to modify or set aside an arbitration award under § 16-4311 or this section is required to file an application urging grounds for such relief within 90 days of the award to ensure that a decision by an arbitrator becomes final without undue delay.

Hercules & Co. v. Shama Restaurant Corp., App. D.C., 613 A.2d 916 (1992).

Ambiguity in award. — Ambiguity in arbitration award would not serve as basis for court to vacate or modify the award. *Spencer v. Spencer*, App. D.C., 494 A.2d 1279 (1985).

Cited in American Fed'n of Gov't Employees v. Koczak, App. D.C., 439 A.2d 478 (1981); *Kaushiva v. Local 2142*, 110 WLR 2701 (Super. Ct. 1982); *Murrell v. Criterion Ins. Co.*, App. D.C., 551 A.2d 95 (1988); *Grad v. Wetherholt Galleries*, App. D.C., 660 A.2d 903 (1995).

§ 16-4313. Judgment or decree on award.

Upon granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the Court. (1973 Ed., T. 16, Appx., § 14; Apr. 7, 1977, D.C. Law 1-117, § 14, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900.)

Section references. — This section is referred to in §§ 1-605.2, 16-4309, and 16-4310.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Cited in American Fed'n of Gov't Employees v. Koczak, App. D.C., 439 A.2d 478 (1981); *Brandon v. Hines*, App. D.C., 439 A.2d 496 (1981); *Hercules & Co. v. Shama Restaurant Corp.*, App. D.C., 613 A.2d 916 (1992).

§ 16-4314. Docketing of judgments.

A judgment or decree entered pursuant to this chapter shall be docketed according to the appropriate rules of the Court. (1973 Ed., T. 16, Appx., § 15; Apr. 7, 1977, D.C. Law 1-117, § 15, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

§ 16-4315. Applications to Court.

Except as otherwise provided, an application to the Court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of Court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. (1973 Ed., T. 16, Appx., § 16; Apr. 7, 1977, D.C. Law 1-117, § 16, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in §§ 1-605.2 and 16-4311.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Notice. — An application to confirm, vacate, modify or correct an arbitration award need

only be served as provided in Superior Court Rule of Civil Procedure 5 for the service of motions. This will generally involve mailing the application to the attorney who has already entered his appearance in the arbitration proceedings on behalf of the opposing party. *American Fed'n of State v. District of Columbia Bd. of Educ.*, 114 WLR 2113 (Super. Ct. 1986).

§ 16-4316. Court.

The term "court" means the Superior Court of the District of Columbia. (1973 Ed., T. 16, Appx., § 17; Apr. 7, 1977, D.C. Law 1-117, § 17, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

§ 16-4317. Appeals.

(a) For purposes of writing an appeal, the following orders shall be deemed final:

(1) An order denying an application to compel arbitration made under Section 16-4302;

(2) An order granting an application to stay arbitration made under Section 16-4302(b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award; and

(5) An order vacating an award without directing a rehearing.

(b) An appeal from an order or judgment entered pursuant to this chapter shall be taken in the manner and to the same extent as from any other order or judgment in a civil action. (1973 Ed., T. 16, Appx., § 18; Apr. 7, 1977, D.C. Law 1-117, § 18, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Motion to compel arbitration. — The denial of a motion to dismiss a complaint, or any count thereof alleging a breach of contract, on the ground that the contract requires arbitration, is immediately appealable. *Hercules & Co. v. Beltway Carpet Serv., Inc.*, App. D.C., 592 A.2d 1069 (1991).

Where plaintiff made a motion to dismiss claim of breach of contract, the motion should have been seen as a motion to compel arbitration, and its denial was immediately appealable under this section. *Hercules & Co. v. Beltway Carpet Serv., Inc.*, App. D.C., 592 A.2d 1069 (1991).

Dismissal of motion to vacate award deemed "final." — Trial court's order finally

determined the rights and obligations of the parties and was final for purposes of appeal, where although the order did not specifically state that it "confirmed" the award, that was the clear effect of its dismissal of a motion to vacate the award. *Tung v. W.T. Cabe & Co.*, App. D.C., 492 A.2d 267 (1985).

Award not reviewed on merits. — The Court of Appeals will not review an arbitration award on the merits. *Poire v. Kaplan*, App. D.C., 491 A.2d 529 (1985).

Appealable orders. — Denials, but not grants, of stays of litigation pending arbitration are appealable interlocutory orders. *Brandon v. Hines*, App. D.C., 439 A.2d 496 (1981).

Cited in American Fed'n of Gov't Employees v. Koczak, App. D.C., 439 A.2d 478 (1981); *Robinson v. Booker*, App. D.C., 561 A.2d 483 (1989); *Haynes v. Kuder*, App. D.C., 591 A.2d 1286 (1991); *Shaff v. Skahill*, App. D.C., 617 A.2d 960 (1992).

§ 16-4318. Prospective applicability to agreements.

The provisions of this chapter shall only apply to agreements made subsequent to its enactment. (1973 Ed., T. 16, Appx., § 19; Apr. 7, 1977, D.C. Law 1-117, § 19, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Cited in American Fed'n of Gov't Employees v. Koczak, App. D.C., 439 A.2d 478 (1981); *Thompson v. Lee*, App. D.C., 589 A.2d 406 (1991).

§ 16-4319. Construction.

This chapter shall be construed as to effectuate its general purpose of making uniform the law of the District of Columbia and those states which enact it. (1973 Ed., T. 16, Appx., § 20; Apr. 7, 1977, D.C. Law 1-117, § 20, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900.)

Section references. — This section is referred to in § 1-605.2.

Legislative history of Law 1-117. — See note to § 16-4301.

Legislative history of Law 3-85. — See note to § 16-4301.

Statute of limitations. — An action under the Labor Management Relations Act to compel arbitration was considered an action in contract, its limitation period therefore being governed by § 12-301(7). *Communications Workers v. AT & T*, 10 F.3d 887 (D.C. Cir. 1993).

Cited in American Fed'n of Gov't Employees v. Koczak, App. D.C., 439 A.2d 478 (1981); Thompson v. Lee, App. D.C., 589 A.2d 406 (1991).

CHAPTER 45. UNIFORM CHILD CUSTODY PROCEEDINGS.

Sec.

- 16-4501. Purposes of chapter.
- 16-4502. Definitions.
- 16-4503. Exercise of jurisdiction.
- 16-4504. Notice and opportunity to be heard.
- 16-4505. Notice to persons outside the District; submission to jurisdiction.
- 16-4506. Simultaneous proceedings in other states.
- 16-4507. Inconvenient forum.
- 16-4508. Jurisdiction declined by reason of conduct.
- 16-4509. Information under oath to be submitted to the Superior Court.
- 16-4510. Additional parties.
- 16-4511. Appearance of parties and the child.
- 16-4512. Binding force and res judicata effect of custody decree.
- 16-4513. Recognition of out-of-state custody decrees.

Sec.

- 16-4514. Modification of custody decree of another state.
- 16-4515. Filing and enforcement of custody decree of another state.
- 16-4516. Registry of out-of-state custody decrees and proceedings.
- 16-4517. Certified copies of custody decree.
- 16-4518. Taking testimony in another state.
- 16-4519. Hearings and studies in another state; orders to appear.
- 16-4520. Assistance to courts of other states.
- 16-4521. Preservation of documents for use in other states.
- 16-4522. Request for court records of another state.
- 16-4523. International application.
- 16-4524. Severability.

§ 16-4501. Purposes of chapter.

(a) The general purposes of this chapter are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his or her family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of the District decline the exercise of jurisdiction when the child and his or her family have a closer connection with another state;

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) Avoid relitigation of custody decisions of other states in the District insofar as feasible;

(7) Facilitate the enforcement of custody decisions of other states;

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of the District and those of other states concerned with the same child; and

(9) Make uniform the law of those states which enact it.

(b) This chapter shall be construed to promote the general purposes stated in this section. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in § 16-4507.

Legislative history of Law 4-200. — Law 4-200, the “District of Columbia Adoption of the Uniform Child Custody Jurisdiction and Marital or Parent and Child Long-Arm Jurisdiction Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-237, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-284 and transmitted to both Houses of Congress for its review.

Access to District of Columbia courts denied party engaged in wrongful conduct to secure child custody. — The Uniform Child Custody Jurisdiction Act (UCCJA) will generally deny access to District of Columbia courts to a parent or another engaged in wrongful or reprehensible conduct in order to secure de facto custody of a child. *Albergett v. James*, App. D.C., 470 A.2d 266 (1983).

Wrongful birth is legislative, not judicial, issue. — In light of legislative policy emphasizing importance of stable home environment and secure family relationship for children and of the possible destabilizing effect on families if parents were permitted to initiate litigation to force a third party to financially rear a child, whether parent may recover cost of rearing healthy but unplanned child from physician allegedly negligent in performing sterilization is best left to legislative action rather than to judicial fiat. *Flowers v. District of Columbia*, App. D.C., 478 A.2d 1073 (1984).

Cited in *In re Roe*, 114 WLR 753 (Super. Ct. 1986); *Platt v. Rogers*, 114 WLR 801 (Super. Ct. 1986); *Haymon v. Wilkerson*, App. D.C., 535 A.2d 880 (1987); *In re B.B.R.*, App. D.C., 566 A.2d 1032 (1989); *Rees v. Reyes*, App. D.C., 602 A.2d 1137, cert. denied, 503 U.S. 991, 112 S. Ct. 1686, 118 L. Ed. 2d 400 (1992); *In re E.Q.B.*, App. D.C., 617 A.2d 199 (1992); *B.J.P. v. R.W.P.*, App. D.C., 637 A.2d 74 (1994).

§ 16-4502. Definitions.

As used in this chapter, the term:

(1) “Custody determination” means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. The term “custody determination” does not include a decision relating to child support or any other monetary obligation of any person.

(2) “Custody proceeding” means proceedings in which a custody determination is one of several issues, such as action for divorce, adoption, or separation, and includes child neglect and dependency proceedings.

(3) “Decree” or “custody decree” means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(4) “District” means the District of Columbia.

(5) “Home state” means the state in which the child, immediately preceding the time involved, lived with his or her parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) “Initial decree” means the 1st custody decree concerning a particular child.

(7) “Modification decree” means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) “Physical custody” means actual possession and control of a child.

(9) “Person acting as parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "Petitioner" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(11) "State" means any state, territory or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(12) "Superior Court" means the Superior Court of the District of Columbia. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Mar. 14, 1985, D.C. Law 5-159, § 2, 32 DCR 30.)

Legislative history of Law 4-200. — See note to § 16-4501.

Legislative history of Law 5-159. — Law 5-159, the "End of Session Technical Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for review.

Cited in *Heim v. Taylor*, 118 WLR 577 (Super. Ct. 1990).

§ 16-4503. Exercise of jurisdiction.

(a) The Superior Court may exercise its jurisdiction to make a child custody determination by initial or modification decree if:

(1) The District (A) is the home state of the child at the time of commencement of the proceeding, or (B) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from the District because of his or her removal or retention by a person claiming his or her custody or for other reasons, and a parent or person acting as parent continues to live in the District;

(2) It is in the best interest of the child that the Superior Court assume jurisdiction because (A) the child and his or her parents, or the child and at least 1 petitioner, have a significant connection with the District, and (B) there is available in the District substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(3) The child is physically present in the District and (A) the child has been abandoned, or (B) it is necessary in an emergency to protect the child because he or she has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(4)(A) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that the District is the more appropriate forum to determine the custody of the child, and (B) it is in the best interest of the child that the Superior Court assume jurisdiction.

(b) Except as provided in subsection (a)(3) and (4), physical presence in the District of the child or of the child and 1 of the petitioners is not sufficient alone to permit the exercise of jurisdiction by the Superior Court to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his or her custody. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in § 16-4512.

Legislative history of Law 4-200. — See note to § 16-4501.

Access to District of Columbia courts denied party engaged in wrongful conduct to secure child custody. — The Uniform Child Custody Jurisdiction Act (UCCJA) will generally deny access to District of Columbia courts to a parent or another engaged in wrongful or reprehensible conduct in order to secure de facto custody of a child. *Albergottie v. James*, App. D.C., 470 A.2d 266 (1983).

Jurisdiction prior to enactment of chapter. — Before the District of Columbia adopted the Uniform Child Custody Proceedings Act, a child's physical presence was sufficient to warrant the exercise of jurisdiction by the courts. *Bennett v. Bennett*, 595 F. Supp. 366 (D.D.C. 1984).

Forum non conveniens. — The trial court properly declined jurisdiction on the basis that the District of Columbia was an inconvenient forum to make a custody determination and that Virginia was the more appropriate forum. *Rees v. Reyes*, App. D.C., 602 A.2d 1137, cert. denied, 503 U.S. 991, 112 S. Ct. 1686, 118 L. Ed. 2d 400 (1992).

Waiver of jurisdictional issue. — Uncritical application of the "no waiver of subject matter jurisdiction" rule when the issue was not raised in the trial court would permit a litigant to contest the merits of a controversy in a convenient forum, exult in victory if she wins, but keep the jurisdictional card in her hip pocket, to be produced only in the event that she loses. *B.J.P. v. R.W.P.*, App. D.C., 637 A.2d 74 (1994).

Where mother waived any territorial limitation on the Superior Court's jurisdiction to firm up the parents' visitation schedules, and to modify the separation agreement with respect to the custodial parent's authority, she could not assert that the District was not the "home state" on appeal. *B.J.P. v. R.W.P.*, App. D.C., 637 A.2d 74 (1994).

Day-old infant brought to District from California. — Superior Court has jurisdiction over infant born in California and brought to the District of Columbia by prospective adoptive parents, with natural mother's consent, the day after birth. *Platt v. Rogers*, 114 WLR 801 (Super. Ct. 1986).

Adopted parent's relinquishment of child. — Adopted father's relinquishment of child to paternal grandparents held sufficient to confer jurisdiction under subsection (a)(3). *In re Roe*, 114 WLR 753 (Super. Ct. 1986).

Significant connection not found. — Entering of divorce decree in the District nine years earlier did not create a "significant connection with the District" under paragraph (a)(2) permitting adjudication of custody and support claims of nonresident parties. *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990).

Visitation decisions. — Visitation decision was improperly delegated to a parent. This improperly commits to the parent a decision that ultimately must remain with the trial court. *Lewis v. Lewis*, App. D.C., 637 A.2d 70 (1994).

Cited in *Creamer v. Creamer*, App. D.C., 482 A.2d 346 (1984); *Heim v. Taylor*, 118 WLR 577 (Super. Ct. 1990); *Johnson v. Cuccias*, 120 WLR 737 (Super. Ct. 1992).

§ 16-4504. Notice and opportunity to be heard.

Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the petitioners, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside the District, notice and opportunity to be heard shall be given pursuant to section 16-4505. (Mar. 10, 1983, D.C. Law 4-200, § 2, 300 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

Cited in *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 16-4505. Notice to persons outside the District; submission to jurisdiction.

(a) Notice required for the exercise of jurisdiction over a person outside the District shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) By personal delivery outside the District in the manner prescribed for

service of process within the District;

(2) In the manner prescribed by the law of the place in which service of process be made;

(3) By any form of mail addressed to the person to be served and requesting a receipt; or

(4) As directed by the Superior Court, including publication if other means of notification are ineffective.

(b) Notice under this section shall be given at least 20 days before any hearing in the District.

(c) If service is made by mail pursuant to subsection (a)(3), proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Proof of service outside the District may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of the District, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(e) Notice is not required if a person submits to the jurisdiction of the Superior Court. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in §§ 16-4504, 16-4510, 16-4511, and 16-4512.

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4506. Simultaneous proceedings in other states.

(a) The Superior Court shall not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because the District is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the Superior Court shall examine the pleadings and other information supplied by the parties under section 16-4509 and shall consult the child custody registry established under section 16-4516 concerning the pendency of proceedings with respect to the child in other states.

(c) Where the Superior Court has reason to believe proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(d) If the Superior Court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 16-4519 through 16-4522.

(e) If the Superior Court has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform

that court of the fact. If the Superior Court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum. (Mar. 10, 1983, D.C. Law 4-200, § 2, 300 DCR 125.)

Legislative history of Law 4-200. — See 1986); In re B.B.R., App. D.C., 566 A.2d 1032 note to § 16-4501. (1989).

Cited in In re Roe, 114 WLR 753 (Super. Ct.

§ 16-4507. Inconvenient forum.

(a) The Superior Court may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the Superior Court's own motion or upon the motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) If another state is or recently was the child's home state;

(2) If another state has a closer connection with the child and his or her family or with the child and 1 or more of the petitioners;

(3) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more available in another state;

(4) If the parties have agreed on another forum which is no less appropriate; and

(5) If the exercise of jurisdiction by the Superior Court would contravene any of the purposes stated in section 16-4501, or any of the provisions of the Parental Kidnapping Prevention Act of 1980 (94 Stat. 3568).

(d) Before determining whether to decline or retain jurisdiction the Superior Court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the Superior Court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his or her consent and submission to the jurisdiction of the other forum.

(f) The Superior Court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the Superior Court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in the District, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the Superior Court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section, the Superior Court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing the District of a finding of inconvenient forum, because the Superior Court is a more appropriate forum, shall be filed in the Superior Court. Upon assuming jurisdiction the Superior Court shall inform the original court of this fact. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

Jurisdiction over divorce proceedings. — Superior Court may retain jurisdiction over a divorce alone despite lack of jurisdiction over the defendant's person. *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

Inconvenient forum found. — The trial court properly declined jurisdiction on the basis

that the District of Columbia was an inconvenient forum to make a custody determination and that Virginia was the more appropriate forum. *Rees v. Reyes*, App. D.C., 602 A.2d 1137, cert. denied, 503 U.S. 991, 112 S. Ct. 1686, 118 L. Ed. 2d 400 (1992).

Cited in *In re Roe*, 114 WLR 753 (Super. Ct. 1986); *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990).

§ 16-4508. Jurisdiction declined by reason of conduct.

(a) If the petitioner seeking an initial decree from the Superior Court has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the Superior Court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the Superior Court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the Superior Court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases where the Superior Court dismisses a petition under this section, the Superior Court may charge the petitioner seeking the decree from the Superior Court with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in § 16-4514.

Legislative history of Law 4-200. — See note to § 16-4501.

Access to District of Columbia courts denied party engaged in wrongful conduct to secure child custody. — The Uniform Child Custody Jurisdiction Act (UCCJA)

will generally deny access to District of Columbia courts to a parent or another engaged in wrongful or reprehensible conduct in order to secure de facto custody of a child. *Albergottie v. James*, App. D.C., 470 A.2d 266 (1983).

Cited in *In re Roe*, 114 WLR 753 (Super. Ct. 1986).

§ 16-4509. Information under oath to be submitted to the Superior Court.

(a) Every party in a custody proceeding, in his or her 1st pleading or in an affidavit attached to that pleading, shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) He or she has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in the District or any other state;

(2) He or she has information of any custody proceeding concerning the child pending in the Superior Court or any other state; and

(3) He or she knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the Superior Court.

(c) The Superior Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Superior Court's exercise of jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the Superior Court of any custody proceeding concerning the child in the District or any other state of which he or she obtained information during the proceeding in the Superior Court. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in §§ 16-4506 and 16-4510.

Legislative history of Law 4-200. — See note to § 16-4501.

Cited in *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990); *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990).

§ 16-4510. Additional parties.

(a) If the Superior Court learns from information furnished by the parties pursuant to section 16-4509 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his or her joinder as a party.

(b) If the person joined as a party is outside the District, he or she shall be served with process or otherwise notified in accordance with section 16-4505. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4511. Appearance of parties and the child.

(a) The Superior Court may order any party to the proceeding who is in the District to appear personally before the Superior Court. If that party has physical custody of the child, the Superior Court may order that he or she appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the Superior Court is outside the District with or without the child, the Superior Court may order that the notice given under section 16-4505 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in the decision adverse to that party.

(c) If a party to the proceeding who is outside the District is directed to appear under subsection (b) or desires to appear personally before the Superior Court with or without the child, the Superior Court may require another party to pay to the Superior Court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4512. Binding force and res judicata effect of custody decree.

A custody decree rendered by the Superior Court under section 16-4503 binds all parties who have been served in the District or notified in accordance with section 16-4505 or who have submitted to the jurisdiction of the Superior Court, and who have been given an opportunity to be heard. As to these parties the custody decree is prima facie evidence of the contents therein contained as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4513. Recognition of out-of-state custody decrees.

The Superior Court shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards substantially similar to those of this chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those in this chapter. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4514. Modification of custody decree of another state.

(a) If a court of another state has made a custody decree, the Superior Court shall not modify that decree unless (1) it appears to the Superior Court that the court which rendered the decree presently does not have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree, and (2) the Superior Court may exercise jurisdiction consistent with this chapter.

(b) If the Superior Court is authorized under subsection (a) and section 16-4508 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 16-4522. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4515. Filing and enforcement of custody decree of another state.

(a) A certified copy of a custody decree of another state may be filed in the Superior Court.

(b) The certified decree shall be treated in the same manner as a custody decree of the Superior Court.

(c) A custody decree so filed has the same effect and shall be enforced in the same manner as a custody decree rendered by the Superior Court.

(d) A person violating a custody decree of another state which makes it necessary to enforce the decree in the District may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his or her witnesses. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

Award of costs inappropriate. — Award of costs pursuant to subsection (d) of this section

was not inappropriate. In re E.Q.B., App. D.C., 617 A.2d 199 (1992).

Cited in Heim v. Taylor, 118 WLR 577 (Super. Ct. 1990).

§ 16-4516. Registry of out-of-state custody decrees and proceedings.

The Superior Court shall maintain a registry containing the following:

- (a) Certified copies of custody decrees of other states received for filing;
- (b) Communications as to the pendency of custody proceedings in other states;
- (c) Communications concerning a finding of inconvenient forum by a court of another state; and

(d) Other communications or documents concerning custody proceedings in another state which may affect the exercise of jurisdiction by the Superior Court or the disposition to be made by it in a custody proceeding. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Mar. 14, 1985, D.C. Law 5-159, § 3, 32 DCR 30.)

Section references. — This section is referred to in § 16-4506.

Legislative history of Law 5-159. — See note to § 16-4502.

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4517. Certified copies of custody decree.

The Superior Court, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4518. Taking testimony in another state.

(a) In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state.

(b) The Superior Court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Mar. 14, 1985, D.C. Law 5-159, § 4, 32 DCR 30.)

Legislative history of Law 4-200. — See note to § 16-4501.

Legislative history of Law 5-159. — See note to § 16-4502.

§ 16-4519. Hearings and studies in another state; orders to appear.

(a) The Superior Court may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the Superior Court, and to forward to the Superior Court certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The costs of the services may be assessed against the parties.

(b) The Superior Court may request the appropriate court of another state to order a party to custody proceedings pending in the Superior Court to appear in the proceedings, and if the party has physical custody of the child, to appear with the child.

(c) The request pursuant to subsections (a) and (b) may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in § 16-4506.

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4520. Assistance to courts of other states.

(a) Upon request of the court of another state, the Superior Court may order a person in the District to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in the District, or may order social studies to be made for use in a custody proceeding in another state.

(b) A certified copy of the transcript of the record of the hearing of the evidence otherwise adduced and any social studies prepared pursuant to subsection (a) shall be forwarded by the Superior Court to the requesting court.

(c) A person within the District may voluntarily give his or her testimony or statement in the District for use in a custody proceeding outside the District.

(d) Upon request of the court of another state, the Superior Court may order a person in the District to appear alone or with the child in a custody proceeding in another state.

(e) The Superior Court may condition compliance with the request pursuant to subsection (d) upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in § 16-4506.

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4521. Preservation of documents for use in other states.

In any custody proceeding in the District, the Superior Court shall preserve the pleadings, orders, decrees, any record that has been made of its hearings, social studies, and other pertinent documents at least until the child reaches 21 years of age. Upon appropriate request of the court of another state, the Superior Court shall forward to the other court certified copies of any or all of these documents. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in §§ 16-4506 and 16-4522.

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4522. Request for court records of another state.

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of the District, the Superior Court upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents

§ 16-4523 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

mentioned in section 16-4521. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Section references. — This section is referred to in §§ 16-4506 and 16-4514.

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4523. International application.

The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

§ 16-4524. Severability.

If any provision of this chapter's application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or applications, and to this end the provisions of this chapter are severable. (Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125.)

Legislative history of Law 4-200. — See note to § 16-4501.

CHAPTER 47. FREE FLOW OF INFORMATION.

Sec.

16-4701. Definitions.

16-4702. Compelled disclosure prohibited.

Sec.

16-4703. Compelled disclosure permitted.

16-4704. Activities not constituting a waiver.

§ 16-4701. Definitions.

For the purpose of this chapter, the term “news media” means:

- (1) Newspapers;
- (2) Magazines;
- (3) Journals;
- (4) Press associations;
- (5) News agencies;
- (6) Wire services;
- (7) Radio;
- (8) Television; or
- (9) Any printed, photographic, mechanical, or electronic means of disseminating news and information to the public. (Sept. 26, 1992, D.C. Law 9-156, § 2, 39 DCR 5682.)

Legislative history of Law 9-156. — Law 9-156, the “Free Flow of Information Act of 1992,” was introduced in Council and assigned Bill No. 9-255, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 2, 1992,

and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-249 and transmitted to both Houses of Congress for its review. D.C. Law 9-156 became effective on September 26, 1992.

§ 16-4702. Compelled disclosure prohibited.

Except as provided in section 16-4703, no judicial, legislative, administrative, or other body with the power to issue a subpoena shall compel any person who is or has been employed by the news media in a news gathering or news disseminating capacity to disclose:

(1) The source of any news or information procured by the person while employed by the news media and acting in an official news gathering capacity, whether or not the source has been promised confidentiality; or

(2) Any news or information procured by the person while employed by the news media in the course of pursuing professional activities that is not itself communicated in the news media, including any:

- (A) Notes;
- (B) Outtakes;
- (C) Photographs or photographic negatives;
- (D) Video or sound tapes;
- (E) Film; or

(F) Other data, irrespective of its nature, not itself communicated in the news media. (Sept. 26, 1992, D.C. Law 9-156, § 2, 39 DCR 5682; July 25, 1995, D.C. Law 11-30, § 4, 42 DCR 1547.)

Section references. — This section is referred to in §§ 16-4703 and 16-4704.

Effect of amendments. — D.C. Law 11-30 substituted “source” for “souce” in (1).

Legislative history of Law 9-156. — See note to § 16-4701.

Legislative history of Law 11-30. — Law 11-30, the “Technical Amendments Act of 1995,” was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

Effect of section. — This section accords total protection to news sources, whether confidential or not, and whether disclosed to others or not. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333 (D.D.C. 1994).

Public interest needed for disclosure. — Without overriding public interest in disclosure, neither the sources which are absolutely privileged, nor the news or information which is conditionally privileged, may be obtained under the District of Columbia Free Flow of Information Act. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333 (D.D.C. 1994).

§ 16-4703. Compelled disclosure permitted.

(a) A court may compel disclosure of news or information otherwise protected from disclosure under section 16-4702(2) if the court finds that the party seeking the news or information established by clear and convincing evidence that:

(1) The news or information is relevant to a significant legal issue before a judicial, legislative, administrative, or other body that has the power to issue a subpoena;

(2) The news or information could not, with due diligence, be obtained by any alternative means; and

(3) There is an overriding public interest in the disclosure.

(b) A court may not compel disclosure of the source of any information protected under section 16-4702. (Sept. 26, 1992, D.C. Law 9-156, § 2, 39 DCR 5682.)

Section references. — This section is referred to in § 16-4702.

Legislative history of Law 9-156. — See note to § 16-4701.

§ 16-4704. Activities not constituting a waiver.

The publication by the news media or the dissemination by a person employed by the news media of a source of news or information, or a portion of the news or information, procured while pursuing professional activities shall not constitute a waiver of the protection from compelled disclosure that is contained in section 16-4702. (Sept. 26, 1992, D.C. Law 9-156, § 2, 39 DCR 5682.)

Legislative history of Law 9-156. — See note to § 16-4701.

CHAPTER 49. AUTHORIZATION FOR MEDICAL CONSENT FOR A MINOR BY
AN ADULT CAREGIVER.

Sec.

16-4901. Authorization for medical consent for
a minor by an adult caregiver.

**§ 16-4901. Authorization for medical consent for a minor
by an adult caregiver.**

(a) A parent, legal guardian, or legal custodian may authorize an adult person, in whose care a minor has been entrusted, to consent to any medical, surgical, dental, developmental screening and/or mental health examination or treatment, including immunization, to be rendered to the minor under the supervision or upon the advice of a physician, nurse, dentist or mental health professional licensed to practice in the District of Columbia, provided there is no prior order of any court in any jurisdiction currently in effect which would prohibit the parent, legal guardian, or legal custodian from exercising the power that they seek to convey to another person. Medical, surgical and dental treatment or examination may include any x-ray or anesthetic required for diagnosis or treatment.

(b) Any written form that is signed by the parent, legal guardian, or legal custodian may be used to convey the authority described in subsection (a) of this section. The form shown below is offered as a sample only and its inclusion in this section shall not be construed to preclude the use of alternative language. Any written statement signed by a parent, legal guardian, or legal custodian is governed by the laws of forgery of the District of Columbia as they are outlined in §§ 22-3841 and 22-3842.

(c) A conveyance of authority described in subsection (a) of this section which is consistent with the requirements of subsection (b) of this section shall be honored by any health care facility or practitioner described in subsection (e) of this section. Notwithstanding subsection (g) of this section, the existence of a written document conveying any authority described in subsection (a) of this section which is consistent with the requirements of subsection (b) of this section creates a presumption that the authority has been lawfully conveyed.

(d) A conveyance of authority described in this section is revocable at will, unless other terms are agreed to by the parent, legal guardian, or legal custodian and the person to whom authority is being conveyed. The parties may provide for terms in writing which would require the revocation of authority to be in writing, make revocation effective only when a specified time period has elapsed after notification of intent to revoke, or any other terms that the parties deem appropriate.

(e) A physician, surgeon, nurse, mental health professional, dentist, or other health care professional, or a hospital or medical facility, that relies on a written instrument that is consistent with the requirements of subsection (b) of this section which authorizes another adult to consent to medical treatment of the executor's minor child or ward shall not incur civil liability for treating a minor without legal consent if a reasonable and prudent health care

professional would have relied on the written instrument under the same or similar circumstances.

(f) This chapter is not intended to provide a substitute for protection proceedings conducted in the Family Division under Chapter 23 of this title.

(g) The execution of a document conveying any authority described in subsection (a) of this section shall not be binding in any future custody proceedings. Regardless of the execution of this document, any future custody determination shall be based on the best interests of the child or other applicable legal standard.

SUGGESTED FORM

1. _____ I am the parent of the child(ren) listed below and there are no court orders now in effect which would prohibit me from exercising the power that I now seek to convey; OR

_____ I am the legal guardian or custodian of the child(ren) by court order (copy attached, if available) and there are no other court orders now in effect which would prohibit me from exercising the power that I now seek to convey.

2. I am temporarily entrusting to _____, an adult who resides at _____, the care of the following child(ren):

_____	_____	_____	_____
Name	Date of Birth	Name	Date of Birth
_____	_____	_____	_____
Name	Date of Birth	Name	Date of Birth

3. The caregiver named above may consent to medical, dental, surgical and/or mental health diagnosis and treatment for the child(ren).

4. I am giving this consent freely and knowingly in order to provide for the child(ren) and not due to pressure, threats, or payments by any person or agency.

5. Upon notification of intent to revoke, there shall be a period of ____ hours before revocation takes effect. Notification of intent to revoke must be in writing.

(put a line through those provisions that are not applicable)

I hereby swear or affirm that the above statements are true, under penalty of law.

_____	_____
Name	Date
(Mar. 27, 1993, D.C. Law 9-264, § 2, 40 DCR 1049; Oct. 15, 1993, D.C. Law 10-33, § 2(b), 40 DCR 5760.)	

Legislative history of Law 9-264. — Law 9-264, the “Authorization for Medical Consent for Children in the Care of Adults Other than Parents Temporary Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-752. The Bill was adopted on first and

second readings on December 15, 1992, and January 5, 1993, respectively. Signed by the Mayor on January 26, 1993, it was assigned Act No. 9-412 and transmitted to both Houses of Congress for its review. D.C. Law 9-264 became effective on March 27, 1993.

Legislative history of Law 10-33. — D.C. Law 10-33, the "Authorization for Medical Consent for Children in the Care of Adults Other than Parents Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-15, which was referred to the Committee on Human Services. The Bill was adopted on first

and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-65 and transmitted to both Houses of Congress for its review. D.C. Law 10-33 became effective on October 15, 1993.

TITLE 17. REVIEW.

Chapter

1. United States Court of Appeals for the District of
Columbia Circuit
3. District of Columbia Court of Appeals..... §§ 17-301 to 17-307.

CHAPTER 1. UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Sec.

17-101 to 17-104. [Repealed].

§§ 17-101 to 17-104. Appeal from District of Columbia Court of Appeals; filing, form and contents of petition; procedure, generally, on appeal from District of Columbia Court of Appeals; record; rules of court; time for petitioning for allowance of appeal from District of Columbia Court of Appeals; determination of appeal from District of Columbia Court of Appeals.

Repealed. July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(1).

CHAPTER 3. DISTRICT OF COLUMBIA COURT OF APPEALS.

Sec.	Sec.
17-301. Applications for allowance of appeals from certain Superior Court judgments; hearing; effect of denial.	pending appeal from, administrative order or decision.
17-302. Regulation of appeals; record; costs.	17-305. Scope of review.
17-303. Appeals from administrative orders and decisions.	17-306. Determination of appeals.
17-304. Stay upon application for review of, or	17-307. Time for taking or applying for allowance of appeals.

§ 17-301. Applications for allowance of appeals from certain Superior Court judgments; hearing; effect of denial.

(a) The application for the allowance of an appeal from a judgment of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, or from a judgment of the criminal division of that court where the penalty imposed is less than \$50, provided for by section 11-721(c), shall be on a standard form, in simple language, prescribed by the Superior Court of the District of Columbia. If the appellant is not represented by counsel, the clerk of the Superior Court of the District of Columbia shall prepare the application in his behalf.

(b) The application provided for by subsection (a) of this section shall be filed in the District of Columbia Court of Appeals within the time limit prescribed by section 17-307(b), and shall be promptly presented by the clerk of that court to three judges thereof for their consideration. When any one of them is of the opinion that the appeal should be allowed, the appeal shall be recorded as granted, and the case set down for hearing on appeal. It shall be given a preferred status on the calendar, and heard in the same manner as other appeals in the court. When the three judges are of the opinion that the appeal should be denied, the denial shall stand as an affirmation of the judgment of the trial court, and there shall be no further appeal. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88-241, § 1; Dec. 8, 1967, 81 Stat. 545, Pub. L. 90-178, § 2; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, §§ 146(a)(2)(A), 155(a); 1973 Ed., § 17-301.)

Cited in Gamble v. Smith, App. D.C., 386 A.2d 692 (1978); Howard Univ. v. Durham, App. D.C., 408 A.2d 1216 (1979); Wilds v. Graham, App. D.C., 560 A.2d 546 (1989); McFarlin v. District of Columbia, App. D.C., 681 A.2d 440 (1996).

§ 17-302. Regulation of appeals; record; costs.

The District of Columbia Court of Appeals may regulate, generally, all matters relating to appeals, whether in the District of Columbia Court of Appeals or in the court below. It may prescribe by rules what part of the proceedings in the court below shall constitute the record on appeal, and may require that the original papers, instead of copies thereof, be sent to it. It may not require that the record or briefs on appeal be printed. If they are printed, the cost of printing may not be taxed as costs in the case. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88-241, § 1; 1973 Ed., § 17-302.)

Appellant proceeding in forma pauperis must convince court of substantial question in order to receive free transcript. —

The losing civil litigant who proceeds in forma pauperis has the burden of convincing the trial court that a substantial question exists on appeal and if appellant speciously asserts the existence of a substantial question which appellee refutes to the trial court's satisfaction, appellant must pay the cost of that demonstration. Costs may be taxed by this court against appellant and deducted from the judgment recovered. *Hancock v. Mutual of Omaha Ins. Co.*, App. D.C., 472 A.2d 867 (1984).

Denial of access to transcript. — Although the trial court, in a criminal prosecution, erred in denying the government access to a requested transcript, mandamus would not lie to correct the error in light of the indications that the trial court would correct its erroneous action and make available alternatives through the exercise of its superintendent power. *United States v. Burka*, App. D.C., 289 A.2d 376 (1972).

Cited in *Jackson v. District of Columbia*, App. D.C., 200 A.2d 199 (1964); *Dorm v. United States*, App. D.C., 559 A.2d 1317 (1989).

§ 17-303. Appeals from administrative orders and decisions.

An appeal from an order or decision as provided for in section 11-722, is commenced by filing, within the time prescribed pursuant to section 17-307(a), the written petition for review provided by section 11 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1510). The District of Columbia Court of Appeals may prescribe the necessary rules and procedures for review of administrative orders and decisions, consistent with such section 11. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(3)(A); 1973 Ed., § 17-303.)

Section references. — This section is referred to in § 17-304.

Narrow exception to rule denying intervention. — As a narrow exception to the rule that intervention will be denied, if the intervenor is the only party who fulfills jurisdictional prerequisites, a court in limited circumstances may treat an intervenor's claim as a separate action and decide the matter, while dismissing the original action. A court may invoke this exception only if: (1) There is an independent jurisdictional basis for the intervenor's claim;

(2) failure to adjudicate the claim would result in unnecessary delay; (3) no evidence of record suggests that the intervenor intervened in order to save jurisdiction (although in retrospect his entry may have that effect); and (4) permitting the case to proceed on the strength of the intervenor's standing does not prejudice any party. *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

Cited in *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

§ 17-304. Stay upon application for review of, or pending appeal from, administrative order or decision.

(a) An application for review, or pendency of an appeal, provided for by section 17-303, does not operate as a stay of the order or decision from which the appeal is taken:

(1) in any case where, under existing law, a stay may not be granted; or

(2) in any other case unless so ordered by the Commissioner [Mayor] or Council of the District of Columbia, by the independent agency, or by the District of Columbia Court of Appeals as provided by subsection (b) of this section.

(b) For good cause shown, and upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may take appropriate and necessary action to preserve the status or rights pending

conclusion of the review proceedings provided for by section 17-303. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(4); 1973 Ed., § 17-304.)

§ 17-305. Scope of review.

(a) In considering an order or judgment of a lower court (or any of its divisions or branches) brought before it for review, the District of Columbia Court of Appeals shall review the record on appeal. When the issues of fact were tried by jury, the court shall review the case only as to matters of law. When the case was tried without a jury, the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

(b) The provisions of section 11 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1510) shall apply with respect to review by the District of Columbia Court of Appeals of an order or decision under that Act. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(5); 1973 Ed., § 17-305.)

Function of review. — Function of the Court of Appeals is limited to reviewing the record and the Court may not disturb the trial court's ultimate findings and conclusions unless they are clearly erroneous or without evidence to support them. *Springer v. Springer*, App. D.C., 248 A.2d 822 (1969).

The function of review precludes the conduct of a trial de novo, and the Court is confined to a review of the record on appeal. *Harmatz v. Zenith Radio Corp.*, App. D.C., 265 A.2d 291 (1970).

The function of the Court of Appeals in reviewing administrative action is to assure that the agency has given full and reasoned consideration to all material facts and issues. There must be a demonstration of a rational connection between the facts found and the choice made. The findings must support the end result in a discernible manner. *Tenants Council v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 426 A.2d 868 (1981).

Where the evidence consisted entirely of stipulated testimony, joint exhibits and other undisputed facts, the Court of Appeals looks to whether the stipulated evidence, and inferences fairly drawn from it, support the conclusions of law reached by the trial court. *Riggs v. Aetna Ins. Co.*, App. D.C., 454 A.2d 818 (1983).

Standard of review. — The trial judge has broad discretion, reviewable only for abuse, with respect to the determination whether the best interests of the child warrant authorizing an adoption without a natural parent's consent. *In re L.W.*, App. D.C., 613 A.2d 350 (1992).

The Court of Appeals may not disturb the motions court's findings of fact unless they are

clearly erroneous. *In re A.S.*, App. D.C., 614 A.2d 534 (1992).

Subsection (a) of this section is indistinguishable from the "clearly erroneous" standard under Super. Ct. Civ. R. 52(a). *Vereen v. Clayborne*, App. D.C., 623 A.2d 1190 (1993).

Review of findings of fact. — Findings of fact by the trial court are conclusive on appeal unless plainly wrong or without evidence to support them. *Lee Washington, Inc. v. Washington Motor Truck Transp. Employees Health & Welfare Trust*, App. D.C., 310 A.2d 604 (1973); *Moore v. United States*, App. D.C., 457 A.2d 406 (1983); *Auxier v. Kraisel*, App. D.C., 466 A.2d 416 (1983).

The scope of review of the Court of Appeals is to determine whether the trial court's findings of fact were supported by substantial evidence and were not clearly erroneous. *Parello v. Lomax*, App. D.C., 253 A.2d 463 (1969); *Julian W. Curtis Co. v. District-Realty Title Ins. Corp.*, App. D.C., 267 A.2d 830 (1970).

A reviewing court will not disturb the findings of fact of a trial court unless clearly erroneous. *Hagans Mgt. Co. v. Nichols*, App. D.C., 409 A.2d 179 (1979); *Hummel v. Koehler*, App. D.C., 458 A.2d 1187 (1983); *Bell v. Jones*, App. D.C., 523 A.2d 982 (1986); *Jones v. United States*, App. D.C., 535 A.2d 409 (1987).

The trial court's factual findings are presumptively correct, unless they are clearly erroneous or unsupported by the record, because the trial court heard the testimony and evaluated its credibility. *Edmund J. Flynn Co. v. LaVay*, App. D.C., 431 A.2d 543 (1981).

In reviewing appeals from the Tax Division, the Court of Appeals will apply the same stan-

dard of review applicable in other decisions of the court in civil cases tried without a jury, will abide by the trial court's factual findings unless they are clearly erroneous, or unless a finding is plainly wrong or without evidence to support it. *Hutchison Bros. Excavating Co. v. District of Columbia*, App. D.C., 511 A.2d 3 (1986).

The appellate court will give considerable deference to the trial court's factual findings, and the appellate court may not disturb them unless they are plainly wrong or without evidence to support them. *Hill v. United States*, App. D.C., 627 A.2d 975 (1993).

Where neither party contests the facts, or any part of them, as "clearly erroneous," the Court of Appeals reviews the trial court's findings deferentially. *Lewis v. United States*, App. D.C., 632 A.2d 383 (1993).

The trial court's findings of fact are reviewed deferentially under the "clearly erroneous" standard; however, the trial court's legal conclusions are reviewed under the non-deferential *de novo* standard. *Ross v. Hacienda Coop.*, App. D.C., 686 A.2d 186 (1996).

Insufficiency of evidence. — In assessing appellant's claim that evidence presented to trial court was insufficient to support conviction, the reviewing court must review the evidence in the light most favorable to the government and give the government the benefit of all reasonable inferences. In *re S.P.*, App. D.C., 465 A.2d 823 (1983).

Review of harmless error. — In reviewing a trial judge's decision as to the harmlessness of a constitutional violation, the appellate court will ask itself, after reviewing the record: (1) Whether the evidentiary and subsidiary facts recited by the trial court and those inferences deduced therefrom are fairly supported by the record; and (2) if so, whether in the appellate court's judgment given the whole record, the error was harmless beyond a reasonable doubt. The first step requires application of the "clearly erroneous" standard; whereas, the second step incorporates "de novo" review. *Davis v. United States*, App. D.C., 564 A.2d 31 (1989).

Review of whether dispute is arbitrable. — Court of Appeals reviews determination of whether a dispute is arbitrable like any question of law, *de novo*. *Haynes v. Kuder*, App. D.C., 591 A.2d 1286 (1991).

Trial court required to make sufficient findings. — There is a threshold requirement that the trial court make sufficient findings to enable the appellate court to exercise meaningful review within the scope permitted. *Murville v. Murville*, App. D.C., 433 A.2d 1106 (1981).

Factual findings cannot be based on speculation. — In a nonjury trial, the court's factual findings were overturned pursuant to this section because they were based on an "assumption," and findings by the trier of fact on vital points in a case cannot be left to mere

conjecture or speculation. *Edison v. Scott*, App. D.C., 388 A.2d 1239 (1978).

Insufficient record remanded for preparation of written statement of findings. — Although the Court of Appeals' review of family court's factual determinations must necessarily be limited, the finder of fact must provide the appeals court with findings sufficient to facilitate appellate review; in the absence of such findings, the Court of Appeals remanded the record of the case to the lower court with instructions to prepare a written statement of its findings, based upon hearing already completed. *Thomas v. Thomas*, App. D.C., 477 A.2d 728 (1984).

Conditional release proceedings. — In cases where conditional release of committed acquittee is in issue, a clear statement of the facts found by the trial court is required, particularly when the release is denied in the face of unanimous expert testimony in favor of release. *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984).

Findings supported by evidence. — Court of Appeals cannot disturb trial court findings supported by the evidence. *Cunningham v. United States*, App. D.C., 391 A.2d 1360 (1978); *Wilson v. United States*, App. D.C., 444 A.2d 25 (1982).

In reviewing a trial court's findings in a motion to suppress, the Court of Appeals must accept its resolution of conflicting testimony, and will not disturb the factual findings so long as they are supported by substantial evidence. *United States v. Alexander*, App. D.C., 428 A.2d 42 (1981).

Setting aside findings of fact. — The Court of Appeals may not set aside a trial court's findings of fact unless it appears they are plainly wrong or without evidence to support them. *Bell v. District of Columbia Dep't of Cors.*, App. D.C., 403 A.2d 330 (1979); *Remco Bus. Systems v. Hollowell*, App. D.C., 430 A.2d 534 (1981); *Anderson v. Prease*, App. D.C., 445 A.2d 612 (1982).

The Court of Appeals may not reverse the trial court, sitting without a jury, on the factual matters unless it appears that the judgment is plainly wrong or without evidence to support it. \$3,265.28 in *United States Currency v. District of Columbia*, App. D.C., 249 A.2d 516 (1969).

In a case tried without a jury, the Court of Appeals may review both the facts and law, but the judgment may not be set aside except for legal errors unless it appears that the judgment is plainly wrong or without evidence to support it. *Reese v. Crosby*, App. D.C., 280 A.2d 526 (1971).

Reversal of trial court on erroneous factual interpretations. — Where the parties to an action have stipulated facts to the trial court and all facts of governing significance have been resolved by a previous civil action, the

appellate court is at liberty to reverse the trial court on factual interpretations which it feels are erroneous. *District of Columbia v. National Bank*, App. D.C., 431 A.2d 1 (1981).

Criteria for setting aside judgment of court sitting without jury. — In reviewing a decision of a trial court sitting without a jury, an appellate court may not set aside the judgment except for errors of law, unless it appears that the judgment is plainly wrong or without evidence to support it. *Robinson v. Jones*, App. D.C., 429 A.2d 1372 (1981).

The Court of Appeals will not set aside a judgment of the trial court sitting without a jury unless it is plainly wrong or without evidentiary support. *Butler v. Whitting*, App. D.C., 647 A.2d 383 (1994).

Evidence sufficient to support findings. — Evidence sufficient to support trial judge's finding that prosecution did not deliberately maneuver defense into moving for mistrial. *Pennington v. United States*, App. D.C., 471 A.2d 250 (1983).

Evidence sufficient to support findings in wrongful eviction claim. — Where the trial court found that appellant had not tendered court costs and late fees to anyone, and where there was sufficient evidence in the record to support its findings, appellant did not meet the requirements necessary to redeem her tenancy before an eviction was completed; accordingly, the landlord could evict her under the lawful process of the court, and the trial court did not err in determining that appellant was not entitled to recover on her wrongful eviction claim. *Butler v. Whitting*, App. D.C., 647 A.2d 383 (1994).

Evidence sufficient to support trial court's findings. *O'Bryant v. District of Columbia*, App. D.C., 223 A.2d 799 (1966); *District of Columbia v. Megginson*, App. D.C., 250 A.2d 571 (1969); *Thompson v. Jackson*, App. D.C., 256 A.2d 408 (1969); *Zaleski v. Congregation of Sacred Hearts of Jesus & Mary*, App. D.C., 256 A.2d 424 (1969); *Freas v. Gitomer*, App. D.C., 256 A.2d 573 (1969); *Parking Mgt., Inc. v. Pride*, App. D.C., 256 A.2d 899 (1969); *Stone Heating & Ventilating Co. v. Anacostia Leasing Corp.*, App. D.C., 256 A.2d 923 (1969); *Griffin v. Heath*, App. D.C., 257 A.2d 488 (1969); *Johns v. Speed*, App. D.C., 257 A.2d 497 (1969); *Fowler v. A & A Co.*, App. D.C., 262 A.2d 344 (1970); *Rhodes v. Gilpin*, App. D.C., 264 A.2d 497 (1970); *Hoard v. Heath*, App. D.C., 266 A.2d 926 (1970); *Tribble v. American Mut. Ins. Co.*, App. D.C., 277 A.2d 659 (1971); *Travelers Ins. Co. v. Tomor*, App. D.C., 283 A.2d 827 (1971); *Lindau v. Lindau*, App. D.C., 286 A.2d 864 (1972); *Sanders v. United States*, App. D.C., 339 A.2d 373 (1975); *Shelton v. United States*, App. D.C., 388 A.2d 859 (1978); *Grogan v. United States*, App. D.C., 435 A.2d 1069 (1981); *Welch v. United States*, App. D.C., 466 A.2d 829 (1983); *Merriweather v.*

United States, App. D.C., 466 A.2d 853 (1983); *Davis v. Davis*, App. D.C., 471 A.2d 1008 (1984); *City Wide Learning Ctr., Inc. v. William C. Smith & Co.*, App. D.C., 488 A.2d 1310 (1985); *Derrington v. United States*, App. D.C., 488 A.2d 1314 (1985), cert. denied, 486 U.S. 1009, 108 S. Ct. 1738, 100 L. Ed. 2d 201 (1988); *Weinberg v. Johnson*, App. D.C., 518 A.2d 985 (1986); *Morgan v. Foretich*, App. D.C., 528 A.2d 425 (1987); *Morgan v. Foretich*, App. D.C., 546 A.2d 407 (1988), cert. denied, 488 U.S. 1007, 109 S. Ct. 790, 102 L. Ed. 2d 781 (1989); *Grubb v. Wm. Calomiris Inv. Corp.*, App. D.C., 588 A.2d 1144 (1991); *Bracey v. Bracey*, App. D.C., 589 A.2d 415 (1991); *Harris v. United States*, App. D.C., 614 A.2d 1277 (1992); *In re Gaither*, App. D.C., 626 A.2d 920 (1993).

Evidence insufficient to support trial court's findings. — See *Ford Motor Co. v. Keating*, App. D.C., 262 A.2d 600 (1970); *Vasile v. District of Columbia*, App. D.C., 296 A.2d 443 (1972); *Lindsay v. District of Columbia*, App. D.C., 298 A.2d 211 (1972); *In re J.G.J.*, App. D.C., 388 A.2d 472 (1978); *Smith v. Smith*, App. D.C., 427 A.2d 928 (1981); *United States v. Bolden*, App. D.C., 429 A.2d 185 (1981); *District of Columbia v. White*, App. D.C., 435 A.2d 1055 (1981); *Bynes v. Scheve*, App. D.C., 435 A.2d 1058 (1981); *Lewis v. United States*, App. D.C., 483 A.2d 1125 (1984).

Interpretation of contract provision. — Interpretation of contract provision is a question of law for the court to decide and the Court of Appeals will not reverse such a decision absent a showing of error of law. *Burns v. Hanover Ins. Co.*, App. D.C., 454 A.2d 325 (1982).

Whether an agreement purported to bind party is essentially a question of law. *Hopkins v. Akins*, App. D.C., 637 A.2d 424 (1993).

Witness credibility. — Credibility of witnesses is a matter within the province of the jury to decide as the trier of fact. *Burroughs v. United States*, App. D.C., 236 A.2d 319 (1967).

The credibility of the witnesses and the inferences to be drawn from their testimony are to be determined by the trier of fact whose determination cannot be disturbed unless plainly wrong or without evidence to support it. *Nche v. United States*, App. D.C., 526 A.2d 23 (1987).

Alimony awards. — Award of alimony, when a divorce is granted upon the husband's application, will not be disturbed, unless an abuse of discretion is made manifest by the record. *Majette v. Majette*, App. D.C., 261 A.2d 824 (1970).

Laches. — Whether the facts, taken together, are sufficient to sustain the defense of laches is a question of law which the appellate court will review without a need for deference to the trial court's judgment. *American Univ.*

Park Citizens Ass'n v. Burka, App. D.C., 400 A.2d 737 (1979).

Determination of when arrest occurred.

— To make an independent determination of when an arrest occurred, the Court of Appeals will give deference to the trial court's findings of fact as to the circumstances surrounding the defendant's encounter with the police. *Giles v. United States*, App. D.C., 400 A.2d 1051 (1979).

New trial based upon prosecutorial misconduct. — An appellant is entitled to a new trial based upon prosecutorial misconduct only if, after balancing the gravity of the prosecutorial misconduct against the weight of the evidence against the appellant, the appellate court is unable to say that the conduct did not substantially sway the judgment of the jury. *Sellers v. United States*, App. D.C., 401 A.2d 974 (1979).

Review required when judge adopts party's proposals. — A stricter review of the record than that provided for in subsection (a) of this section is in order when a trial judge adopts, verbatim, the proposals of one party. The essential inquiry on review in such a case is whether these "findings and conclusions ultimately represent the judge's own determinations." *District Concrete Co. v. Bernstein Concrete Corp.*, App. D.C., 418 A.2d 1030 (1980).

Cited in *Dawson v. Drazia*, App. D.C., 223 A.2d 375 (1966); *Prather v. Hill*, App. D.C., 250 A.2d 690 (1969); *Bowles v. Hagans*, App. D.C., 256 A.2d 407 (1969); *McKelton v. Bruno*, App. D.C., 264 A.2d 493 (1970); *Hill v. District of Columbia*, App. D.C., 345 A.2d 867 (1975); *Group Hospitalization, Inc. v. Westley*, App. D.C., 350 A.2d 745 (1976); *United States v. Lowery*, App. D.C., 382 A.2d 1007 (1977); *Smith v. Rogers Mem. Hosp.*, App. D.C., 382 A.2d 1025, cert. denied, 439 U.S. 847, 99 S. Ct. 146, 58 L. Ed. 2d 148 (1978); *United States v. Covington*, App. D.C., 385 A.2d 164 (1978); *Edwards v. Woods*, App. D.C., 385 A.2d 780 (1978); *Douglas v. United States*, App. D.C., 386 A.2d 289 (1978); *Wright v. United States*, App. D.C., 387 A.2d 582 (1978); *Metts v. United States*, App. D.C., 388 A.2d 47 (1978); *Benvenuto v. Benvenuto*, App. D.C., 389 A.2d 795 (1978); *In re Douglas*, App. D.C., 390 A.2d 1, cert. denied, 439 U.S. 1058, 99 S. Ct. 738, 58 L. Ed. 2d 716 (1978), rehearing denied, 439 U.S. 1122, 99 S. Ct. 1036, 59 L. Ed. 2d 84 (1979); *Sundown, Inc. v. Canal Square Assocs.*, App. D.C., 390 A.2d 421 (1978); *Little v. United States*, App. D.C., 393 A.2d 94 (1978); *Rose v. Silver*, App. D.C., 394 A.2d 1368 (1978), rehearing denied, App. D.C., 398 A.2d 787 (1979); *Bussey v. United States*, App. D.C., 395 A.2d 11 (1978); *In re W.B.W.*, App. D.C., 397 A.2d 143 (1979); *Brock v. Mutual Reports, Inc.*, App. D.C., 397 A.2d 149 (1979); *Gavin v. Washington Post Employees Fed. Credit Union*, App. D.C., 397 A.2d 968 (1979); *In re Y.G.*, App. D.C., 399

A.2d 65 (1979); *District of Columbia v. Onley*, App. D.C., 399 A.2d 84 (1979); *Lewis v. United States*, App. D.C., 399 A.2d 559 (1979); *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979); *Giant Food, Inc. v. Jack I. Bender & Sons*, App. D.C., 399 A.2d 1293 (1979); *Reid v. United States*, App. D.C., 402 A.2d 835 (1979); *John McShain, Inc. v. L'Enfant Plaza Properties, Inc.*, App. D.C., 402 A.2d 1222 (1979); *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979); *Nelson-Bey v. Robinson*, App. D.C., 408 A.2d 999 (1979); *Sheriff v. Medel Elec. Co.*, App. D.C., 412 A.2d 38 (1980); *United States v. Alston*, App. D.C., 412 A.2d 351 (1980); *Gray v. Gray*, App. D.C., 412 A.2d 1208 (1980); *In re Kirk*, App. D.C., 413 A.2d 928 (1980); *Dunhill v. Director, D.C. Dep't of Transp.*, App. D.C., 416 A.2d 244 (1980); *Flack v. Laster*, App. D.C., 417 A.2d 393 (1980); *J.M.A.L. v. Lutheran Social Servs. of Nat'l Capital Area, Inc.*, App. D.C., 418 A.2d 133 (1980); *Aleotti v. Whitaker Bros. Bus. Machs.*, App. D.C., 427 A.2d 919 (1981); *Hughes v. United States*, App. D.C., 429 A.2d 1339 (1981); *Boddie v. Robinson*, App. D.C., 430 A.2d 519 (1981); *Owens v. Curtis*, App. D.C., 432 A.2d 737 (1981); *Williams v. United States*, App. D.C., 441 A.2d 255, cert. denied, 459 U.S. 916, 103 S. Ct. 230, 74 L. Ed. 2d 182 (1982); *Wisconsin Ave. Assocs. v. 2720 Wis. Ave. Coop. Ass'n*, App. D.C., 441 A.2d 956, cert. denied, 459 U.S. 827, 103 S. Ct. 62, 74 L. Ed. 2d 64 (1982); *Wisconsin Ave. Assocs. v. 2720 Wis. Ave. Coop. Ass'n*, App. D.C., 441 A.2d 956, cert. denied, 459 U.S. 827, 103 S. Ct. 62, 74 L. Ed. 2d 64 (1982); *Hartford Accident & Indem. Co. v. District of Columbia*, App. D.C., 441 A.2d 969 (1982); *In re Marshall*, App. D.C., 445 A.2d 5 (1982); *Ready v. United States*, App. D.C., 445 A.2d 982 (1982); *Hackes v. Hackes*, App. D.C., 446 A.2d 396 (1982); *Broadwater v. Broadwater*, App. D.C., 449 A.2d 286 (1982); *United States v. Anderson*, App. D.C., 450 A.2d 446 (1982); *United States v. Donaldson*, App. D.C., 451 A.2d 51 (1982), cert. denied, 464 U.S. 838, 104 S. Ct. 128, 78 L. Ed. 2d 124 (1983); *Abney v. United States*, App. D.C., 451 A.2d 78 (1982); *Smith v. Jenkins*, App. D.C., 452 A.2d 333 (1982); *McKeamer v. United States*, App. D.C., 452 A.2d 348 (1982); *In re Thompson*, App. D.C., 454 A.2d 1322 (1982); *Kaushiva v. Hutter*, App. D.C., 454 A.2d 1373, cert. denied, 464 U.S. 820, 104 S. Ct. 83, 78 L. Ed. 2d 93 (1983); *Hawkins v. United States*, App. D.C., 461 A.2d 1025 (1983), cert. denied, 464 U.S. 1052, 104 S. Ct. 734, 79 L. Ed. 2d 193 (1984); *American Mach. Tool Distribs. Ass'n v. National Permanent Fed. Sav. & Loan Ass'n*, App. D.C., 464 A.2d 907 (1983); *Chaconas v. Meyers*, App. D.C., 465 A.2d 379 (1983); *Automatic Enters., Inc. v. District of Columbia*, App. D.C., 465 A.2d 388 (1983); *TVL Assocs. v. A & M Constr. Corp.*, App. D.C., 474 A.2d 156 (1984); *Washington v. United States*, App. D.C., 475 A.2d 1127 (1984); *Earle v. Dis-*

- trict of Columbia, App. D.C., 479 A.2d 877 (1984); *Cahn v. Antioch Univ.*, App. D.C., 482 A.2d 120 (1984); *In re K.A.*, App. D.C., 484 A.2d 992 (1984); *Powell v. United States*, App. D.C., 485 A.2d 596 (1984), cert. denied, 474 U.S. 981, 106 S. Ct. 420, 88 L. Ed. 2d 339 (1985); *Eissa v. United States*, App. D.C., 485 A.2d 610 (1984), cert. denied, 474 U.S. 1013, 106 S. Ct. 544, 88 L. Ed. 2d 474 (1985); *Siegel v. Banker*, App. D.C., 486 A.2d 1163 (1984); *Graves v. United States*, App. D.C., 490 A.2d 1086 (1984), cert. denied, 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788 (1986); *Gassaway v. Gassaway*, App. D.C., 489 A.2d 1073 (1985); *In re D.I.S.*, App. D.C., 494 A.2d 1316 (1985); *Jackson v. Holder*, App. D.C., 495 A.2d 746 (1985); *Williams v. Williams*, App. D.C., 495 A.2d 754 (1985); *District of Columbia v. Fowler*, App. D.C., 497 A.2d 456 (1985); *Curry v. United States*, App. D.C., 498 A.2d 534 (1985); *Hammill v. United States*, App. D.C., 498 A.2d 551 (1985); *District of Columbia v. Washington Sheraton Corp.*, App. D.C., 499 A.2d 109 (1985); *J.H. Westerman Co. v. Fireman's Fund Ins. Co.*, App. D.C., 499 A.2d 116 (1985); *Chase v. Gilbert*, App. D.C., 499 A.2d 1203 (1985); *United States v. Frost*, App. D.C., 502 A.2d 462 (1985), cert. denied, 479 U.S. 836, 107 S. Ct. 134, 93 L. Ed. 2d 77 (1986); *Liuksila v. District of Columbia Rental Hous. Comm'n*, App. D.C., 503 A.2d 666 (1986); *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 506 A.2d 1127 (1986); *In re C.J.*, App. D.C., 514 A.2d 460 (1986); *Sandoval v. Mendez*, App. D.C., 521 A.2d 1168 (1987); *Safeway Stores, Inc. v. District of Columbia*, App. D.C., 525 A.2d 207 (1987); *Estate of Presgrave v. Stephens*, App. D.C., 529 A.2d 274 (1987); *District of Columbia v. Acme Reporting Co.*, App. D.C., 530 A.2d 708 (1987); *Warren v. Chapman*, App. D.C., 535 A.2d 856 (1987); *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987); *East v. East*, App. D.C., 536 A.2d 1103 (1988); *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988); *Curtis v. Cuff*, App. D.C., 537 A.2d 1072 (1987); *Brown v. United States*, App. D.C., 542 A.2d 1231 (1988); *Pritch v. Henry*, App. D.C., 543 A.2d 808 (1988); *Keatts v. Robinson*, App. D.C., 544 A.2d 716 (1988); *Ozerol v. Howard Univ.*, App. D.C., 545 A.2d 638 (1988); *Jackson v. Young*, App. D.C., 546 A.2d 1009 (1988); *United States v. Felder*, App. D.C., 548 A.2d 57 (1988); *Browner v. District of Columbia*, App. D.C., 549 A.2d 1107 (1988); *Williams v. Williams*, App. D.C., 554 A.2d 791 (1989); *In re D.C.*, App. D.C., 561 A.2d 477 (1989); *Bowler v. Joyner*, App. D.C., 562 A.2d 1210 (1989); *Oxendine v. Merrell Dow Pharmaceuticals, Inc.*, App. D.C., 563 A.2d 330 (1989), cert. denied, 493 U.S. 1074, 110 S. Ct. 1121, 107 L. Ed. 2d 1028 (1990); *George Wash. Univ. v. District of Columbia*, App. D.C., 563 A.2d 759 (1989); *Morgan v. Foretich*, App. D.C., 564 A.2d 1 (1989); *Sarbacher v. McNamara*, App. D.C., 564 A.2d 701 (1989); *Hershon v. Hellman Co.*, App. D.C., 565 A.2d 282 (1989); *Taylor v. United States*, App. D.C., 565 A.2d 992 (1989); *Karr v. C. Dudley Brown & Assocs.*, App. D.C., 567 A.2d 1306 (1989); *Kimes v. United States*, App. D.C., 569 A.2d 104 (1989); *Nolan v. Nolan*, App. D.C., 568 A.2d 479 (1990); *Griffith v. Butler*, App. D.C., 571 A.2d 1161 (1990); *In re A.C.*, App. D.C., 573 A.2d 1235 (1990); *Washington Medical Ctr., Inc. v. Holle*, App. D.C., 573 A.2d 1269 (1990); *International Comm'n on English in Liturgy v. Schwartz*, App. D.C., 573 A.2d 1303 (1990); *Williams v. United States*, App. D.C., 576 A.2d 1339 (1990); *Rubin v. Lee*, App. D.C., 577 A.2d 1158 (1990); *Butler v. Harrison*, App. D.C., 578 A.2d 1098 (1990); *Strong v. United States*, App. D.C., 581 A.2d 383 (1990); *In re S.G.*, App. D.C., 581 A.2d 771 (1990); *Fleming v. Carroll Publishing Co.*, App. D.C., 581 A.2d 1219 (1990); *Mount Jezreel Christians Without a Home v. Board of Trustees*, App. D.C., 582 A.2d 237 (1990); *Waverly Taylor, Inc. v. Polinger*, App. D.C., 583 A.2d 179 (1990); *Wheeler v. Goulart*, App. D.C., 593 A.2d 173 (1991); *Washington v. United States*, App. D.C., 594 A.2d 1050 (1991); *Lawson v. United States*, App. D.C., 596 A.2d 504 (1991); *Washington Post Co. v. District of Columbia*, App. D.C., 596 A.2d 517 (1991); *R. & G. Orthopedic Appliances & Prosthetics, Inc. v. Curtin*, App. D.C., 596 A.2d 530 (1991); *Riggs Nat'l Bank v. Carl G. Rosinski Co.*, App. D.C., 596 A.2d 997 (1991); *Wolf v. District of Columbia*, App. D.C., 597 A.2d 1303 (1991); *Peay v. United States*, App. D.C., 597 A.2d 1318 (1991); *Markowitz v. United States*, App. D.C., 598 A.2d 398 (1991), cert. denied, 506 U.S. 1035, 113 S. Ct. 818, 121 L. Ed. 2d 689 (1992); *Walls v. United States*, App. D.C., 601 A.2d 54 (1991); *West v. United States*, App. D.C., 604 A.2d 422 (1992); *Weiner v. Weiner*, App. D.C., 605 A.2d 18 (1992); *Jackson v. United States*, App. D.C., 605 A.2d 45 (1992); *In re M.N.M.*, App. D.C., 605 A.2d 921 (1992), cert. denied, 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567 (1992); *Stroman v. United States*, App. D.C., 606 A.2d 767 (1992); *Minnick v. United States*, App. D.C., 607 A.2d 519 (1992); *Moore v. United States*, App. D.C., 609 A.2d 1133 (1992); *Johnson v. United States*, App. D.C., 610 A.2d 729 (1992); *Wolf v. District of Columbia*, App. D.C., 611 A.2d 44 (1992); *Bufford v. District of Columbia Pub. Sch.*, App. D.C., 611 A.2d 519 (1992); *Nguyen v. Liberty Mut. Ins. Co.*, App. D.C., 611 A.2d 541 (1992); *Simms v. District of Columbia*, App. D.C., 612 A.2d 215 (1992); *Mozelle v. United States*, App. D.C., 612 A.2d 221 (1992); *In re Burton*, App. D.C., 614 A.2d 46 (1992); *Reiman v. International Hospitality Group, Ltd.*, App. D.C., 614 A.2d 925 (1992); *Spencer v. District of Columbia*, App. D.C., 615 A.2d 586 (1992); *Griffin v. United States*, App. D.C., 618 A.2d 114 (1992); *Mihias v. United States*, App. D.C., 618 A.2d 197

(1992); *Donahue v. Thomas*, App. D.C., 618 A.2d 601 (1992); *Langley v. Kornegay*, App. D.C., 620 A.2d 865 (1993); *Fleming v. Carroll Publishing Co.*, App. D.C., 621 A.2d 829 (1993); *Duncan v. United States*, App. D.C., 629 A.2d 1 (1993); *Confederate Mem. Ass'n v. United Daughters of Confederacy*, App. D.C., 629 A.2d 37 (1993); *In re Baby Boy C.*, App. D.C., 630 A.2d 670 (1993), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L.Ed. 2d 16 (1994); *Bingham v. Goldberg*, *Marchesano, Kohlman, Inc.*, App. D.C., 637 A.2d 81 (1994); *Gause v. C.T. Mgt., Inc.*, App.

D.C., 637 A.2d 434 (1994); *Carter v. United States*, App. D.C., 643 A.2d 348 (1994); *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994); *Curry v. United States*, App. D.C., 658 A.2d 193 (1995); *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995); *Hawkins v. United States*, App. D.C., 663 A.2d 1221 (1995); *Stewart v. United States*, App. D.C., 668 A.2d 857 (1995); *District of Columbia v. Sierra Club*, App. D.C., 670 A.2d 354 (1996); *Peterson v. District of Columbia Lottery & Charitable Games Control Bd.*, App. D.C., 673 A.2d 664 (1996).

§ 17-306. Determination of appeals.

The District of Columbia Court of Appeals may affirm, modify, vacate, set aside or reverse any order or judgment of a court or any division or branch thereof, or any administrative order or decision, lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate order, judgment, or decision, or require such further proceedings to be had, as is just in the circumstances. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(6); 1973 Ed., § 17-306.)

Jurisdiction to consider whether infirmities in jury selection process vitiate conviction. — The Court of Appeals has jurisdiction under this section to consider whether infirmities in the jury selection process vitiate a conviction, and if it so holds, reverse that conviction. *Sweet v. United States*, App. D.C., 449 A.2d 315 (1982).

Execution of judgments. — Where the Court of Appeals affirmed an award of compensatory damages but remanded a punitive damages award, and determined that the two issues were independent, this section gave the Court sufficient authority to justify a determination that the plaintiffs could execute upon the judgment for compensatory damages without awaiting the retrial on punitive damages. *Jonathan Woodner Co. v. Breeden*, App. D.C., 681 A.2d 1098 (1996).

Voluntariness of defendant's absence. — Resumption of trial without determination of voluntariness of defendant's absence held erroneous. See *Black v. United States*, App. D.C., 506 A.2d 1130 (1986).

Direction to enter judgment permitted. — Where the proof is insufficient to sustain a conviction for grand larceny, but is sufficient to sustain a conviction for petit larceny, the Court of Appeals can direct the trial court to enter a judgment accordingly. *Williams v. United States*, App. D.C., 376 A.2d 442 (1977).

Reversal of conviction. — Where the conduct of all parties was interwoven into a single joint event, and where all of the co-participants' convictions were subject to reversal, it was only

"just in the circumstances" to reverse defendant's simple assault conviction as well. *Adams v. United States*, App. D.C., 558 A.2d 348 (1989).

Review of sentences prohibited. — Absent legislative direction to undertake the task of sentencing, and a firm guidance as to the applicable standards for such a review, the Court of Appeals may not enter the area of reviewing the excessiveness of sentences. *Foster v. United States*, App. D.C., 290 A.2d 176 (1972).

Cited in Metropolitan Roofing & Sheet Metal Co. v. Franklin Inv. Co., App. D.C., 256 A.2d 913 (1969); *In re C.G.S.*, App. D.C., 372 A.2d 1017 (1977); *Blake Constr. Co. v. C.J. Coakley Co.*, App. D.C., 431 A.2d 569 (1981); *Staton v. United States*, App. D.C., 466 A.2d 1245 (1983); *In re Morris*, App. D.C., 482 A.2d 369 (1984); *Barnett v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 491 A.2d 1156 (1985); *Goudy v. United States*, App. D.C., 505 A.2d 461, cert. denied, 479 U.S. 832, 107 S. Ct. 120, 93 L. Ed. 2d 66 (1986); *Thompson v. Thompson*, App. D.C., 559 A.2d 311 (1989); *Miller v. Miller*, App. D.C., 561 A.2d 1005 (1989); *Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n*, App. D.C., 573 A.2d 1043 (1990), modified, App. D.C., 590 A.2d 362 (1991); *Merrell Dow Pharmaceuticals, Inc. v. Oxendine*, App. D.C., 593 A.2d 1023 (1991); *Briggs v. United States*, App. D.C., 597 A.2d 370 (1991); *McCormick v. United States*, App. D.C., 635 A.2d 347 (1993); *Bethard v. District of Columbia*, App. D.C., 650 A.2d 651 (1994).

§ 17-307. Time for taking or applying for allowance of appeals.

(a) Except as provided by subsection (b) of this section, the time during which an appeal may be taken pursuant to section 11-721 or 11-722 may be fixed by rules of the District of Columbia Court of Appeals.

(b) Applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, and from judgments in the criminal division of that court where the penalty imposed is less than \$50, specified by section 11-721(c), shall, in each case, be filed in the District of Columbia Court of Appeals within three days from the date of judgment. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(7); 1973 Ed., § 17-307.)

Section references. — This section is referred to in §§ 17-301 and 17-303.

Substitution for application. — Notice of appeal is not adequate substitute for application for allowance of appeal. *In re Kane*, App. D.C., 422 A.2d 995 (1980).

Cited in *Barnett v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 491 A.2d 1156 (1985); *McFarlin v. District of Columbia*, App. D.C., 681 A.2d 440 (1996).

PART III.

DECEDENTS' ESTATES AND FIDUCIARY RELATIONS.

TITLE 18. WILLS.

TITLE 19. DESCENT AND DISTRIBUTION.

TITLE 20. PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES.

TITLE 21. FIDUCIARY RELATIONS AND THE MENTALLY ILL.

TITLE 18. WILLS.

Chapter

1. General Provisions..... §§ 18-101 to 18-112.
3. Devises and Bequests..... §§ 18-301 to 18-308.
5. Probate of Wills..... [Repealed].

British statutes omitted. — Section 6 of the Act of September 14, 1965, provided: "The following British statutes, heretofore classified to Part III of the District of Columbia Code, 1961 Edition, under the authority of § 1 of the Act approved March 3, 1901 (31 Stat. 1189, ch. 854; D.C. Code, 1961 Ed., § 49-301), have no futher force, as such, in the District of Columbia:

(1) 9 Henry III (1225), Chapter 7, § 1 (D.C. Code, 1961 Ed., § 18-201);

(2) 13 Edward I (1285), Chapter 4 (D.C. Code, 1961 Ed., § 18-207);

(3) 13 Edward I (1285), Chapter 7 (D.C. Code, 1961 Ed., § 18-208);

(4) 13 Edward I (1285), Chapter 15, § 1 (D.C. Code, 1961 Ed., § 21-117);

(5) 13 Edward I (1285), Chapter 34, § 4 (D.C. Code, 1961 Ed., § 18-203);

(6) 21 Henry VIII (1529), Chapter 4, § 1 (D.C. Code, 1961 Ed., § 18-605);

(7) 27 Henry VIII (1535), Chapter 10, § 6, 7, 9 (D.C. Code, 1961 Ed., §§ 18-206, 18-209, 18-205, respectively);

(8) 43 Elizabeth I (1601), Chapter 8, § 2 (D.C. Code, 1961 Ed., § 20-113);

(9) 30 Charles II (1677), Chapter 7, § 2 (D.C. Code, 1961 Ed., § 20-114);

(10) 4 and 5 William and Mary (1692), Chapter 24, § 12 (D.C. Code, 1961 Ed., § 20-112);

(11) 25 George II (1752), Chapter 6, §§ 1, 2, 7 (D.C. Code, 1961 Ed., §§ 19-104, 19-106, 19-105, respectively)."

Preservation of rights and liabilities. — Section 8 of the Act of September 14, 1965, provided that any rights or liabilities existing under the statutes or parts thereof repealed by the Act of September 14, 1965, and any cases actions, or proceedings instituted under, or growing out of, any of the statutes or parts thereof repealed by the Act of September 14, 1965, are not affected by the repeal. However, laws becoming effective after February 3, 1965, and inconsistent with the Act of September 14, 1965, supersede it to the extent of the inconsistency.

CHAPTER 1. GENERAL PROVISIONS.

Sec.

18-101. Definitions.

18-102. Capacity to make a will.

18-103. Execution of written will; attestation.

18-104. Devises, legacies, etc., to attesting witnesses.

18-105. Retention or demand of void devise or

Sec.

legacy by attesting witness prohibited.

18-106. Creditors as competent witnesses.

18-107. Nuncupative wills.

18-108. Execution of power by will.

18-109. Revocation of wills; revival.

Sec.

18-110. Opening will before delivery to Probate Court.

18-111. Withholding will.

Sec.

18-112. Taking and carrying away, or destroying, mutilating, or secreting will.

§ 18-101. Definitions.

As used in this title, unless the context requires a different meaning: words importing the singular include the plural, and words importing the plural include the singular;

the present tense includes the future as well as the present;

“District Court” means the United States District Court for the District of Columbia; and

“Probate Court” and “court”, respectively, mean the Superior Court of the District of Columbia. (Sept. 14, 1965, 79 Stat. 685, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 566, Pub. L. 91-358, title I, § 147(1); 1973 Ed., § 18-101; June 4, 1982, D.C. Law 4-111, § 2(c), 29 DCR 1684.)

Legislative history of Law 4-111. — Law 4-111, the “Anti-Sex Discriminatory Language Act and Uniform Disposition of Unclaimed Property Act of 1980 Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first

and second readings on March 9, 1982, and March 23, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-174 and transmitted to both Houses of Congress for its review.

Cited in *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

§ 18-102. Capacity to make a will.

A will, testament, or codicil is not valid for any purpose unless the person making it is at least 18 years of age and, at the time of executing or acknowledging it as provided by this chapter, of sound and disposing mind and capable of executing a valid deed or contract. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1; 1973 Ed., § 18-102; July 22, 1976, D.C. Law 1-75, § 4(a), 23 DCR 1180.)

Cross references. — As to penalty for withholding will, see § 18-111.

As to penalty for taking, destroying, mutilating, or secreting will, see § 18-112.

Legislative history of Law 1-75. — Law 1-75, the “District of Columbia Age of Majority Act,” was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative intent. — Congress in adopting this section did not intend to deprive a mentally competent person of testamentary capacity merely because he was subject to conservatorship. *Rossi v. Fletcher*, 418 F.2d 1169 (D.C. Cir. 1969), cert. denied, 396 U.S. 1009, 90 S. Ct. 568, 24 L. Ed. 2d 501 (1970).

Presumptions. — There is a presumption in favor of testamentary capacity. In re *Estate of Weir*, 475 F.2d 988 (D.C. Cir. 1973).

“Sound and disposing mind.” — The “Sound and disposing mind” necessary to make a valid will means that the testator must have had, at the time of the execution of the instrument, sufficient mental capacity to dispose of his property or estate with judgment and understanding, considering the nature and character of the estate as well as the relative claims of different persons who would be the natural objects of his bounty. In re *Estate of Weir*, 475 F.2d 988 (D.C. Cir. 1973).

Unnatural disposition of estate. — The unnatural disposition of an estate, alone, is not an indication of testamentary incapacity. In re *Estate of Weir*, 475 F.2d 988 (D.C. Cir. 1973).

Cited in *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980).

§ 18-103. Execution of written will; attestation.

A will or testament, other than a will executed in the manner provided by section 18-107, is void unless it is:

(1) in writing and signed by the testator, or by another person in his presence and by his express direction; and

(2) attested and subscribed in the presence of the testator, by at least two credible witnesses. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1; 1973 Ed., § 18-103.)

Section references. — This section is referred to in §§ 18-105 and 18-109.

Burden of proving formal execution of will rests on the party wishing to have document admitted to probate. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Ancient document doctrine applicable to wills. — The doctrine that an ancient document may be accepted as being genuinely executed for purposes of being submitted to a jury is applicable to wills. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Use of parol evidence restricted. — A litigant may not furnish by parol those features of a testament for which this section demands peculiarly formalized writing. In re Estate of Kerr, 433 F.2d 479 (D.C. Cir. 1970).

Purpose of signature. — The purpose of a signature to a will is both to identify the testator and to authenticate the document. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Signature must do more than identify maker. — In order to be testamentary in character, the signature to a will must indicate something more than the mere act of identifying the maker of the document in question. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Testator must intend signature to be binding. — There must be proof that the testator intended his signature to bind his intention. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Location of signature. — There is no requirement that the signature be at any particular place on a will to be binding. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Attestation by second witness invalid. — Where the evidence showed that the testatrix finished the entire document in 1 sitting, signed it, had 1 witness sign it, and then went to bed, evidence that, at some unknown time, another witness signed the 1st page which was presented for probate failed to establish that the will was validly attested by the 2nd wit-

ness. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Holographic wills. — Holographic wills must be attested and subscribed in the presence of the testator by 2 witnesses, although they need not sign in each other's presence or physically observe each other's signature. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Testator need not sign in presence of witnesses. — This section does not require that a testator sign a will in the presence of the witnesses. It requires only that the witnesses sign in the presence of the testator. Davis v. Davis, App. D.C., 471 A.2d 1008 (1984).

Decedent's signature outside the presence of witnesses. — If one or both witnesses have not seen decedent sign, the will proponents must establish that the decedent's signature was already on the document when witnesses signed and that the decedent acknowledged document as his or her will. Davis v. Davis, App. D.C., 471 A.2d 1008 (1984).

Altered carbon copy remains duplicate of original will. — The carbon copy of an original will, despite handwritten notations and changes, some of which in minor respects differed from those in the original, does not have efficacy separate and apart from the original, and the carbon remains nothing more than a duplicate. Estate of McKeever, App. D.C., 361 A.2d 166 (1976).

Presumption of regularity in execution. — Where a writing had been found in an unsealed envelope, with a portion missing, it would be inappropriate to use the limited rule of circumstantial evidence to presume regularity in execution so as to permit admission of the document to probate for full testamentary purposes. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Single page of 3-page will denied probate. — A document, which evidence showed was 1 page of a 3-page will and which disposed of 70% of testatrix' estate but contained an incomplete sentence at the bottom of the final page was not part of the longer, complete document that was duly executed by the decedent

and properly attested by the witnesses so as to permit admission to probate of the single page. In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972).

Maximum share of interested witnesses.

— A testator's heirs at law or next of kin who are necessary witnesses to the will can take legacies under the will up to the amount but not in excess of their intestate share if decedent had died intestate. In re Estate of Pye, 325 F. Supp. 321 (D.D.C. 1971).

Codicil bequests to witnesses of codicil invalid. — Where a codicil was subscribed and attested to by 3 witnesses and contained bequests to 2 of those witnesses, the codicil is invalid with respect to such bequests. In re Estate of Pye, 325 F. Supp. 321 (D.D.C. 1971).

Cited in Estate of Presgrave v. Stephens, App. D.C., 529 A.2d 274 (1987).

§ 18-104. Devises, legacies, etc., to attesting witnesses.

(a) A beneficial devise, legacy, estate, interest, gift, or power of appointment of or affecting real or personal estate, given or made to an attesting witness to a will or codicil is void as to him and persons claiming under him, except as provided by subsections (b) and (c) of this section.

(b) Where an interested witness to a will or codicil, referred to in subsection (a) of this section, would be entitled to a share of the estate of the testator in case the will or codicil were not established, he or persons claiming under him shall take such portion of the devise or bequest made to him in the will or codicil as does not exceed the share of the estate which would be distributed to him or persons claiming under him in case of intestacy.

(c) The voidance provided for by subsection (a) of this section does not apply to charges on real estate for the payment of debts.

(d) Notwithstanding subsection (a) of this section, an interested witness referred to therein, whether an heir at law or not, is not disqualified as a competent witness to the execution of the will or codicil by reason of his interest. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1; 1973 Ed., § 18-104.)

Purpose of section. — The purpose of this section is to give maximum effect to wills and to eliminate any financial incentive which might taint the necessary objectivity of attesting witnesses. In re Estate of Small, 346 F. Supp. 600 (D.D.C. 1972).

Codicil bequest to witness of codicil valid. — Where a codicil was subscribed and attested to by 3 witnesses, 2 of whom were legally disinterested, the bequest made in the codicil to the other witness is valid. In re Estate of Pye, 325 F. Supp. 321 (D.D.C. 1971).

Codicil bequests to witnesses of codicil invalid. — Where a codicil was subscribed and

attested to by 3 witnesses and contained bequests to 2 of those witnesses, the codicil is invalid with respect to such bequests. In re Estate of Pye, 325 F. Supp. 321 (D.D.C. 1971).

Attorney held to have financial interest. — Where an attorney who drew a will which nominated him as executor and authorized payment of 10 percent for his services was an attesting witness to the will, the attorney had a financial interest which constituted a "beneficial interest". In re Estate of Small, 346 F. Supp. 600 (D.D.C. 1972).

§ 18-105. Retention or demand of void devise or legacy by attesting witness prohibited.

A person to whom a beneficial devise, legacy, estate, interest, gift, or power of appointment is given or made in a will or codicil, which is void under section 18-103, may not, in any manner or under any color or pretense whatsoever:

(1) demand or take possession of or receive any profits or benefit of or from the devise, legacy, estate, interest, gift, or power of appointment so given or made; or

(2) demand, receive, or accept from another person the beneficial devise, legacy, estate, interest, gift, or power of appointment or any satisfaction or compensation therefor. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1; 1973 Ed., § 18-105.)

§ 18-106. Creditors as competent witnesses.

A mere charge in a will or codicil on the estate of a testator for the payment of debts does not disqualify a creditor from being a competent witness to the will or codicil. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1; 1973 Ed., § 18-106.)

§ 18-107. Nuncupative wills.

A nuncupative will made after January 1, 1902, is not valid in the District of Columbia except that a person in actual military or naval service or a mariner at sea may dispose of his personal property by word of mouth, if:

(1) his oral disposition of the property is proved by at least two witnesses who were present at the making thereof and were requested by the testator to bear witness that the disposition was his last will; and

(2) the will is made during the time of the last illness of the deceased; and

(3) the substance of the will is reduced to writing within 10 days after it was made. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1; 1973 Ed., § 18-107.)

Section references. — This section is referred to in §§ 18-103 and 18-109.

§ 18-108. Execution of power by will.

An appointment made by will in the exercise of a power is not valid unless it is so executed that it would be valid for the disposition of the property to which the power applies if it belonged to the testator. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1; 1973 Ed., § 18-108.)

Cross references. — As to general devise and bequest of all property, see § 18-303.

As to powers to create estates, see §§ 45-101 to 45-119.

§ 18-109. Revocation of wills; revival.

(a) A will or codicil, or a part thereof, may not be revoked, except by implication of law, otherwise than by

(1) a later will, codicil, or other writing declaring the revocation, executed as provided by section 18-103 or 18-107; or

(2) burning, tearing, cancelling, or obliterating the will or codicil, or the part thereof, with the intention of revoking it, by the testator himself, or by a person in his presence and by his express direction and consent.

(b) A will or codicil, or a part thereof, after it is revoked, may not be revived otherwise than by its re-execution, or by a codicil executed as provided in the case of wills, and then only to the extent to which an intention to revive is shown. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1; 1973 Ed., § 18-109.)

Implied revocation. — The basis for the doctrine of implied revocation of will is that there has been such a change both in status and responsibility as to raise the presumption of change in intention. *Richards v. Liles*, App. D.C., 435 A.2d 379 (1981).

The doctrine of implied revocation applies where there has been a divorce and division of property by the court. *Richards v. Liles*, App. D.C., 435 A.2d 379 (1981).

The revocation by implication doctrine did not apply to the designation of beneficiary rights for insurance proceeds where husband's redesignation of wife on the very day the court entered a judgment of divorce reflected a manifest intent that the wife be the ultimate recipient of those proceeds. *Bolle v. Hume*, App. D.C., 619 A.2d 1192 (1993).

Copies of former wills. — Copies of former wills, whether executed or unexecuted, must be made available to the Court under threat of criminal penalty. *Doherty v. Fairall*, 413 F.2d 381 (D.C. Cir. 1969).

Altered carbon copy remains duplicate of original will. — The carbon copy of an

original will, despite handwritten notations and changes, some of which in minor respects differed from those in the original, does not have efficacy separate and apart from the original, and the carbon remains nothing more than a duplicate. *Estate of McKeever*, App. D.C., 361 A.2d 166 (1976).

Doctrine of dependent relative revocation inapplicable. — Although the decedent had requested and received new will forms which were found in her apartment, where no will had been executed with a defect, doctrine of dependent relative revocation does not apply. *Estate of McKeever*, App. D.C., 361 A.2d 166 (1976).

Conclusive presumption of revocation arises with divorce and property settlement. — The presumption of revocation of a will in favor of a former spouse that arises with divorce and property settlement is conclusive. *Richards v. Liles*, App. D.C., 435 A.2d 379 (1981).

Cited in *Estate of Bowden v. Aldridge*, App. D.C., 595 A.2d 396 (1991).

§ 18-110. Opening will before delivery to Probate Court.

A person having possession or custody of a testamentary instrument may, after the death of the testator, open and read it in the presence of near relatives of the deceased, who may conveniently have notice thereof, and of other persons, and immediately thereafter may deliver the will or codicil to the Probate Court or the Register of Wills, until proceedings may be held for the purpose of proving it or other action is taken thereon. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1; 1973 Ed., § 18-110.)

Cross references. — As to penalty for withholding will, see § 18-111.

As to penalty for taking, destroying, mutilating or secreting will, § 18-112.

§ 18-111. Withholding will.

Whoever, having possession of a testamentary instrument, willfully neglects, for the period of 90 days after the death of the testator becomes known to him, to deliver it to the Probate Court, or to the Register of Wills, or to an executor named in the instrument, shall be fined not more than \$500. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1; 1973 Ed., § 18-111.)

Cross references. — As to opening will before delivery to Probate Court, see § 18-110.

Copies of former wills. — Copies of former wills, whether executed or unexecuted, must be

made available to the Court under threat of criminal penalty. *Doherty v. Fairall*, 413 F.2d 381 (D.C. Cir. 1969). **Cited in** *In re Lenoir*, App. D.C., 585 A.2d 771 (1991).

§ 18-112. Taking and carrying away, or destroying, mutilating, or secreting will.

Whoever, during the life or after the death of the testator, for a fraudulent purpose, takes and carries away, or destroys, mutilates, or secretes, a testamentary instrument, shall be imprisoned not more than five years. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1; 1973 Ed., § 18-112.)

Copies of former wills. — Copies of former wills, whether executed or unexecuted, must be made available to the Court under threat of criminal penalty. *Doherty v. Fairall*, 413 F.2d 381 (D.C. Cir. 1969).

CHAPTER 3. DEVISES AND BEQUESTS.

Sec.

- 18-301. Estates disposable by will.
- 18-302. [Repealed].
- 18-303. General devise and bequest of all property.
- 18-304. Devise of land to include leaseholds.
- 18-305. After-acquired real property.

Sec.

- 18-306. "Pour over" trusts.
- 18-307. Advancement as satisfaction of devise or bequest.
- 18-308. Death of devisee or legatee; lapsed or void devises or bequests.

§ 18-301. Estates disposable by will.

The real and personal estate of a person, which may pass by deed or gift, or which would, in case of the owner's dying intestate, descend to or devolve upon his heirs or other legal representatives, may be disposed of, transferred, and passed by his last will, testament, or codicil in accordance with this Part. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1; 1973 Ed., § 18-301.)

Cross references. — As to devise in lieu of dower, see § 19-112.

As to spouse's election in lieu of provisions of will, see §§ 19-113 and 19-114.

As to power to create estates, see Chapter 1 of Title 45.

As to estates which may be created in land, see §§ 45-201 to 45-219.

As to estates which may be created in personal property, see § 45-223.

As to conveyable estates and methods of conveyance, see Chapter 3 of Title 45.

As to interpretation of instruments, see Chapter 4 of Title 45.

As to devises in trust, see Chapter 11 of Title 45.

§ 18-302. Devises or bequests for religious purposes.

Repealed. June 24, 1980, D.C. Law 3-72, § 203(b), 27 DCR 2155.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

§ 18-303. General devise and bequest of all property.

A devise and bequest purporting to be of all real or personal property, or both, belonging to the testator, includes also all property of either or both kinds, respectively, over which he has a general power of appointment, unless a contrary intention appears in the testamentary instrument containing the devise or bequest. (Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1; 1973 Ed., § 18-303.)

§ 18-304. Devise of land to include leaseholds.

A devise of the land of a testator, or of his land in any place, or in the occupation of a person named or otherwise described in a general manner, includes his leasehold estates or those to which the descriptions extend, as well as freehold estates, unless a contrary intention appears in the testamentary instrument containing the devise. (Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1; 1973 Ed., § 18-304.)

§ 18-305. After-acquired real property.

(a) A will executed after January 17, 1887, and before January 1, 1902, devising real property, from which it appears that it was the intention of the testator to devise property acquired after the execution of the will, operates as a valid devise of all after-acquired real property.

(b) A will executed after January 1, 1902, which by words of general import devises all the estate or all the property of the testator, operates as a valid devise of real property acquired by the testator after the execution of the will, unless it appears therefrom that it was not the intention of the testator to devise the after-acquired real property. (Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1; 1973 Ed., § 18-305.)

§ 18-306. "Pour over" trusts.

(a) *Bequests or Devises to Trustee Under, or in Accordance With Terms of, Existing Trusts.* — A devise or bequest may be made in a will or codicil, otherwise valid, in form or substance to the trustees under, or in accordance with the terms of, a written inter vivos trust, including an unfunded life insurance trust, although the settlor has reserved rights of ownership in the insurance contracts, which has been executed and is in existence prior to or contemporaneously with the execution of the will or codicil and is identified in the will or codicil, without regard to the size or character of the corpus of the trust, or whether the settlor is the testator or a third person.

The devise or bequest is not invalid because the trust is subject to amendment or modification or may be terminated or revoked after the will or codicil is executed, whether by the settlor or any other person or persons, nor because the trust instrument or an amendment thereto was not executed in the manner required by law for wills or codicils.

Unless the will or codicil otherwise provides:

(1) the devise or bequest is not invalid because the trust was amended or modified after the will or codicil was executed, and the devise or bequest shall be given effect in accordance with the terms of the trust as they appear in writing on the date of death of the testator, including any amendment or modification;

(2) property passing under the devise or bequest passes directly to the trustees of the inter vivos trust and becomes a part of the assets of the trust, and is not deemed to be held under a separate testamentary trust;

(3) an entire revocation of the trust prior to the death of the testator invalidates the devise or bequest even though the revocation was not effected in the manner provided by law for the revocation of wills and codicils;

(4) a termination of the trust, except by way of revocation, in accordance with the terms of the trust or by its exhaustion or by operation of law or otherwise does not invalidate the devise or bequest.

(b) *Bequests or Devises to Trustee Under, or in Accordance With Terms of, Testamentary Trusts.* — A devise or bequest may be made in a will or codicil, otherwise valid, in form of substance to the trustees under, or in accordance with the terms of, a testamentary trust established under another valid will or

codicil. The devise or bequest is not invalid because the testamentary trust or the will or codicil establishing the testamentary trust was not in existence when the will or codicil containing the devise or bequest was executed, if the testator of the will or codicil establishing the testamentary trust predeceases the testator of the will or codicil containing the devise or bequest, and the will or codicil establishing the testamentary trust is admitted to probate.

Unless the will otherwise provides:

(1) property passing under the devise or bequest is deemed to pass directly to the trustees of the testamentary trust and becomes a part of the assets of the trust, and is not deemed to be held under a separate testamentary trust;

(2) a termination of the trust in accordance with the terms of the trust or by its exhaustion or by operation of law or otherwise does not invalidate the devise or bequest.

(c) This section applies to a devise or bequest made by a testator living on December 5, 1963, or born subsequent thereto, without regard to the date of execution of the will or codicil containing the devise or bequest or of the trust instrument, or an amendment thereto.

(d) This section does not affect the validity, as existing before December 5, 1963, of:

(1) a devise or bequest made by a testator who died prior to December 5, 1963; or

(2) a devise or bequest which does not come within this section. (Sept. 14, 1965, 78 Stat. 688, Pub. L. 89-183, § 1; 1973 Ed., § 18-306.)

Cited in *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

§ 18-307. Advancement as satisfaction of devise or bequest.

An advancement or a provision for an advancement to a person is a satisfaction, in whole or in part, of a devise or bequest to that person contained in a previous will if it would be so deemed in case the devisee or legatee were the child of the testator; and, whether he is a child or not, it shall be so deemed where it appears from parol or other evidence to be so intended. (Sept. 14, 1965, 79 Stat. 689, Pub. L. 89-183, § 1; 1973 Ed., § 18-307.)

Cross references. — As to advancement to child or descendant, see § 19-319.

§ 18-308. Death of devisee or legatee; lapsed or void devises or bequests.

Unless a different disposition is made or required by the will, if a devisee or legatee dies before the testator, leaving issue who survive the testator, the issue shall take the estate devised or bequeathed as the devisee or legatee would have done if he had survived the testator. Unless a contrary intention appears by the will, the property comprised in a devise or bequest in a will that

fails or is void or is otherwise incapable of taking effect, shall be deemed included in the residuary devise or bequest, if any, contained in the will. (Sept. 14, 1965, 79 Stat. 689, Pub. L. 89-183, § 1; 1973 Ed., § 18-308.)

Application of section. — This section applies to gifts of residuum as well as to other devises and bequests contained in a will. In re Estate of Kerr, 433 F.2d 479 (D.C. Cir. 1970).

Construction. — This section is to be interpreted liberally with a view to attainment of its beneficent objectives. In re Estate of Kerr, 433 F.2d 479 (D.C. Cir. 1970).

Testator's intent. — A testator's intention is important to the operation of this section. In re Estate of Kerr, 433 F.2d 479 (D.C. Cir. 1970).

Survivorship. — Words referable to survivorship do not necessarily condition a testamentary gift and the construction properly to be placed on survivorship language is a product of the testator's intention. In re Estate of Kerr, 433 F.2d 479 (D.C. Cir. 1970).

Intention that gift lapse. — An intention that a testamentary gift should lapse is mani-

fested when the will articulates the gift in words effectively conditioning its efficacy on the beneficiary's survival of the testator. In re Estate of Kerr, 433 F.2d 479 (D.C. Cir. 1970).

Lapsed share of residual legatee not transferred to others. — Where the testator provided that if any of 3 residual legatees did not survive him, his or her devise and bequest would lapse, and where testator left no heirs and did not provide what would happen to a lapsed share, this section did not transfer the lapsed share of a residual legatee who predeceased the testator to the 2 remaining legatees and the lapsed share passed by intestacy and escheated to the District. *Starkey v. District of Columbia*, App. D.C., 377 A.2d 382 (1977).

Cited in *District of Columbia v. Estate of Parsons*, App. D.C., 590 A.2d 133 (1991).

CHAPTER 5. PROBATE OF WILLS.

Sec.

18-501 to 18-514. [Repealed].

§§ 18-501 to 18-514. Notice of petition for probate; notice to nonresidents and unfound residents; notice to unknown kin or heirs at law; probate; waiver of notice; proof of execution; proof of wills; testimony; witnesses outside District; appearance of persons not cited; admission to probate; caveat; will not to be probated while issues pending; caveat; time for filing; prior will not to be probated pending issues; guardian ad litem; plenary proceedings; rules of procedure; wills filed prior to June 8, 1898, may be probated as of real estate.

Repealed. June 24, 1980, D.C. Law 3-72, § 203(c), 27 DCR 2155.

Legislative history of Law 3-72. — Law 3-72, the “District of Columbia Probate Reform Act of 1980,” was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

TITLE 19. DESCENT AND DISTRIBUTION.

Chapter

1. Rights of Surviving Spouse and Children..... §§ 19-101 to 19-115.
3. Intestates' Estates..... §§ 19-301 to 19-321.
5. Simultaneous Deaths; Uniform Law..... §§ 19-501 to 19-506.
7. Escheat..... § 19-701.

CHAPTER 1. RIGHTS OF SURVIVING SPOUSE AND CHILDREN.

Sec.

- 19-101. Family allowance; construction; penalties.
19-102. Dower; quarantine; curtesy abolished.
19-103. Forfeiture of dower by desertion and adultery.
19-104. Absent or incompetent spouse.
19-105. Jointure before marriage as bar to dower.
19-106. Jointure after marriage; election.
19-107. Effect of acts of one spouse.
19-107a. Release of dower.
19-108. Recovery of dower withheld; damages.
19-109. Recovery of dower obtained by default or collusion; damages.

Sec.

- 19-110. Assignment by guardian; rights of heir.
19-111. Reendowment upon eviction from jointure.
19-112. Devise or bequest to spouse.
19-113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements.
19-114. Rights of surviving spouse if there is no renunciation.
19-115. Definition.

§ 19-101. Family allowance; construction; penalties.

(a) Upon the death of a person leaving a surviving spouse, the spouse is entitled to an allowance out of the personal estate of the decedent of the sum of \$10,000 for the personal use of himself and of minor children. The allowance shall be paid in money, or in specific property at its fair value, as the surviving spouse may elect. It is exempt from all debts and obligations of the decedent, and is subject only to the payment of funeral expenses not exceeding \$1,500.

(b) When there is no surviving spouse, the surviving minor children, if any, are entitled to the allowance provided for by subsection (a) of this section. This allowance is payable, in the discretion of the Probate Court, to the person having custody of the children, or to such other person as the court designates. The person to whom the allowance is paid shall use it solely for the care and maintenance of the children.

(c) The allowance provided for by this section is in addition to the respective shares of the surviving spouse and children.

(d) This section applies to estates of all persons dying after June 24, 1949; and if there is any conflict or inconsistency between this section and other provisions of this Part or any other law, this section controls.

(e) Whoever, with respect to the family allowance authorized by this section:

- (1) makes a false affidavit; or
- (2) willfully violates an order of the Probate Court; or
- (3) willfully violates a provision of this section —

shall be fined not more than \$2,500 for each offense. (Sept. 14, 1965, 79 Stat. 693, Pub. L. 89-183, § 1; Aug. 11, 1971, 85 Stat. 314, Pub. L. 92-88, § 5; 1973

Ed., § 19-101; June 24, 1980, D.C. Law 3-72, § 204(a), 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 2, 42 DCR 63.)

Cross references. — As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 20-353.

Effect of amendments. — Section 2 of D.C. Law 10-241 substituted “\$1,500” for “\$750” in the last sentence in (a).

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — Law 3-72, the “District of Columbia Probate Reform Act of 1980,” was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law 10-241, the “Probate Reform Act of 1994,” was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Application of Law 10-241. — Section 4 of D.C. Law 10-241, as amended by § 2 of D.C.

Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Intent of section. — This section was intended to supply the surviving spouse with necessary money before any distribution or payment is made out of the estate. In re Estate of Jones, 259 F. Supp. 951 (D.D.C. 1966).

From the clear and repeated statements of legislative purpose, it is apparent that the Council of the District of Columbia did not intend for the common-law distinction between realty and personalty to pose an obstacle to payment of the family allowance through the sale of realty if the personal representative deemed the sale necessary. In re Estate of Burton, App. D.C., 541 A.2d 599 (1988).

Right to allowance not vested. — The right of the surviving spouse to an allowance from a personal estate of the deceased spouse is not a vested right. If the surviving spouse dies before receiving the allowance, the right to its payment is lost and the money becomes part of the estate of first deceased. In re Estate of Jones, 259 F. Supp. 951 (D.D.C. 1966).

Payment of allowance permissible. — Payment of the family allowance, out of the net proceeds of a sale of real property ordered by the court, in order to pay the decedent’s creditors, was permissible. In re Estate of Burton, App. D.C., 541 A.2d 599 (1988).

Cited in Interdonato v. Interdonato, App. D.C., 521 A.2d 1124 (1987); Duggan v. Keto, App. D.C., 554 A.2d 1126 (1989); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 19-102. Dower; quarantine; curtesy abolished.

(a) The widow of a deceased man, with respect to parties who inter-married prior to November 29, 1957, or the widow or widower of a deceased person dying after March 15, 1962, is entitled to dower and its incidents as the rights thereto were known at common law with respect to widows, including the use, during her or his natural life, of one-third part of all the land on which the deceased spouse was seized of an estate of inheritance at any time during the marriage. The surviving spouse entitled to dower under this section may remain in the chief dwelling house of the decedent 40 days after the death, without being liable for rent therefor, within which period the dower of the surviving spouse, if not previously assigned to her or him, shall be so assigned. In the meantime, the surviving spouse may have reasonable sustenance out of the estate of the decedent.

(b) The right of dower and its incidents provided for by subsection (a) of this section entitles the widow or widower to lands held by the deceased spouse at any time during the marriage, whether by legal or equitable title, and whether held by the decedent at the time of death, or not, but the right does not operate

to the prejudice of a claim for the purchase money of the lands or other lien thereon.

(c) The right of dower provided for by this section does not attach to lands held by two or more persons as joint tenants while the joint tenancy exists. A husband may not claim a right of dower in land which his wife, during the coverture, conveyed or transferred to another person by her sole deed prior to November 29, 1957.

(d) With respect to the real estate of a wife dying after November 29, 1957, there is no estate by the curtesy. (Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1; 1973 Ed., § 19-102.)

Cross references. — As to assignment of dower in partition proceedings, see Chapter 29 of Title 16.

As to release of dower, see §§ 19-107a and 19-113.

As to renunciation of dower, see § 19-113.

Section references. — This section is referred to in § 19-106.

Application of dower rights to husband

and wife. — Section 3 of the Act of September 14, 1965, provided: "Effective Mar. 15, 1962, all provisions of the Act entitled 'An Act to establish a code of law for the District of Columbia', approved Mar. 3, 1901, as amended, and all other laws in force in the District of Columbia, relating to the right of dower and its incidents, apply to both husband and wife."

§ 19-103. Forfeiture of dower by desertion and adultery.

(a) A person who voluntarily abandons or deserts his or her spouse and lives with another person with whom he or she commits adultery, and who is convicted of the adultery by a court having jurisdiction, forfeits the right to dower, and is forever barred of an action to demand it.

(b) Subsection (a) of this section does not apply if the aggrieved spouse willingly, and without coercion, pardons the offending spouse and permits the resumption of cohabitation. (Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1; 1973 Ed., § 19-103.)

Cited in *Harvey v. United States*, App. D.C., 385 A.2d 36 (1978).

§ 19-104. Absent or incompetent spouse.

The spouse of a person who is insane, and has been so adjudicated by a court of competent jurisdiction and the adjudication remains in force, or who has been absent or unheard of for seven years, may grant and convey by a separate deed, whether it is absolute or by way of lease or mortgage, as fully as if he were unmarried, any real property acquired by him since the adjudication or since the beginning of the absence. (Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1; 1973 Ed., § 19-104.)

Cross references. — As to right of dower, see § 19-102.

As to release of dower, see § 19-107a.
As to renunciations, see § 19-113.

§ 19-105. Jointure before marriage as bar to dower.

(a) Where real estate is conveyed to persons who intend to marry, or to one of them alone, or to a person and his heirs and assigns, to the use of persons

who intend to marry, or to the use of one of them alone, for the purpose of creating for the latter person mentioned in either case a freehold estate for that person's life at least, and with his assent before the marriage, to take effect in possession and profits immediately upon the death of the other, the jointure bars his right or claim of dower in all the real estate of the spouse. The assent of the person for whose benefit the estate is created is evidenced by that person's becoming a party to the conveyance by which it is settled, or, if he is a minor, by his joining with the father or guardian thereof in the conveyance.

(b) The jointure referred to in subsection (a) of this section is not a bar to dower unless it is expressly made and declared to be in satisfaction of the whole dower, and not of any particular part of it. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; 1973 Ed., § 19-105.)

Cross references. — As to right of dower, see § 19-102.

§ 19-106. Jointure after marriage; election.

If, after persons intermarry, real estate is given or assured for jointure of one of them, in lieu of dower, the person for whose benefit the settlement is made, if he survives the other spouse, shall elect to take the jointure or to claim the dower to which he is entitled under section 19-102. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; 1973 Ed., § 19-106.)

Cross references. — As to right of dower, see § 19-102.

§ 19-107. Effect of acts of one spouse.

A judgment or decree confessed or recovered against one spouse, and any laches, default, covin, forfeiture, or deed or conveyance of one spouse without the assent of the other, evidenced by his acknowledgment thereof in the manner required by law to pass the contingent right of dower, does not prejudice the right of the other spouse dower, nor preclude him from the recovery thereof. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; 1973 Ed., § 19-107.)

Cross references. — As to right of dower, see § 19-102.

§ 19-107a. Release of dower.

If the spouse of the party executing a deed, being not less than eighteen years of age, shall desire to release his or her dower in the property conveyed, he or she may do so either by joining in the same deed or by a separate deed, wherever executed, signed, sealed, and acknowledged by him or her in the same manner as provided in section 45-602, and his or her acknowledgment shall be certified in like manner. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 494; June 30, 1902, 32 Stat. 531, ch. 1329; 1973 Ed., § 19-107a; Oct. 1, 1976, D.C.

Law 1-87, § 33(c), 23 DCR 2544; Apr. 30, 1988, D.C. Law 7-104, § 5(a), 35 DCR 147.)

Cross references. — As to right of dower, see § 19-102.

As to conveyance of real estate acquired after the insanity or absence of spouse for 7 years, see § 19-104.

Effect of amendments. — D.C. Law 7-104 substituted “section 45-602” for “section 45-402.”

Legislative history of Law 1-87. — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

References in text. — Section 45-602, referred to in this section, was repealed March 6, 1991 by D.C. Law 8-205 § 12(a). For present provisions regarding acknowledgment of notarial acts, see § 45-621 et seq.

§ 19-108. Recovery of dower withheld; damages.

When, in an action brought for the purpose, a surviving spouse recovers dower in lands from the estate of the deceased spouse, the surviving spouse may also, in the discretion of the court, recover in the same action damages for the withholding of the dower. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; 1973 Ed., § 19-108.)

§ 19-109. Recovery of dower obtained by default or collusion; damages.

If, during the infancy of an heir of a deceased spouse, or of any other person entitled to the lands of the deceased spouse, the surviving spouse, not having a right of dower, recovers dower by the default or collusion of the guardian of the infant, the infant is not prejudiced thereby, and when he comes of full age he has a right of action against the surviving spouse to recover the lands so wrongfully awarded for dower, with damages in the discretion of the court; but, if it is established in an action brought under this section that the surviving spouse is entitled to the dower, he shall have judgment so declaring, and may, in the discretion of the court, recover damages from the heir or other person. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; 1973 Ed., § 19-109.)

§ 19-110. Assignment by guardian; rights of heir.

A guardian of a minor heir has the right of assignment or admeasurement of dower; but the heir, when he comes of full age, is not barred by such an assignment if it was wrongfully made pursuant to collusion between the guardian and the tenant in dower, and may have the dower properly assigned or admeasured according to law. (Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1; 1973 Ed., § 19-110.)

Cross references. — As to right of dower, see § 19-102. As to age of majority, see note following § 21-101.

§ 19-111. Reendowment upon eviction from jointure.

A spouse who is lawfully evicted from lands settled upon him as jointure in lieu of dower, or from a part thereof, is entitled to dower to the extent or value of the lands from which he was evicted. (Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1; 1973 Ed., § 19-111.)

§ 19-112. Devise or bequest to spouse.

Subject to section 19-114, and unless it is otherwise expressed in the will, a devise of real estate or an interest therein, or a bequest of personal estate or an interest therein, to the surviving spouse, bars his or her share in the decedent's estate, and his or her dower rights. (Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1; 1973 Ed., § 19-112.)

Section references. — This section is referred to in § 19-113.

§ 19-113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements.

(a) Subject to section 19-114, a surviving spouse is, by a devise or bequest specified in section 19-112, barred on any statutory rights or interest he has in the real and personal estate of the deceased spouse or dower rights, as the case may be, unless, within six months after the will of the deceased spouse is admitted to probate, he files in the Probate Court a written renunciation to the following effect:

"I, A B, widow [or surviving husband] of _____ late of _____, deceased, renounce and quit all claim to any devise or bequest made to me by the last will of my husband [or wife] exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal estate of my deceased spouse (except than in lieu of my legal share of the real estate, I elect to take dower in all the real estate of my deceased spouse to which that right is applicable)."

(b) In similar manner, where the deceased spouse dies intestate of real estate, and letters of administration are issued with respect to the estate the surviving spouse is barred of dower rights, unless, within six months after the letters of administration have been issued with respect to the estate of the deceased spouse, he files in the Probate Court a written renunciation of his legal share of the intestate real estate to the following effect:

"I A B, widow [or surviving husband] of _____ deceased, in lieu of my legal share of the real estate which my deceased spouse died intestate, elect to take

dower in all the real estate of my deceased spouse to which the right is applicable.”

(c) If, during the period of six months specified by subsection (a) or (b) of this section, a suit is instituted to construe the will of the deceased spouse, the period of six months for the filing of the renunciation or election commences to run from the date when the suit is finally determined. A renunciation or election may be made in behalf of a spouse unable to act for himself by reason of infancy, incompetency, or inability to manage his property, by the guardian or other fiduciary acting for the spouse when so authorized by the court having jurisdiction of the person of the spouse. The time for renunciation by a spouse may be extended before its expiration by an order of the Probate Court for successive periods of not more than six months each upon petition showing reasonable cause and on notice given to the personal representative and to the other persons herein referred to in such manner as the Probate Court directs.

(d) Where a decedent has not made a devise or bequest to the spouse, or nothing passes by a purported devise or bequest, the surviving spouse is entitled to his legal share of the real and personal estate of the deceased spouse without filing a written renunciation, but may, instead, elect to take dower as provided by subsection (b) of this section.

(e) The legal share of a surviving spouse under subsection (a) or (d) of this section is such share or interest in the real or personal property of the deceased spouse, including dower if elected in lieu of the legal share in the real estate, as he would have taken if the deceased spouse had died intestate, not to exceed one-half of the net estate bequeathed and devised by the will, or, if dower is elected, one-half of the net personal property bequeathed and dower in the real estate devised.

(f) A valid antenuptial or postnuptial agreement entered into by the spouses determines the rights of the surviving spouse in the real and personal estate of the deceased spouse and the administration thereof, but a spouse may accept the benefits of a devise or bequest made to him by the deceased spouse. (Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1; 1973 Ed., § 19-113.)

Cross references. — As to right of dower, see § 19-102.

Section references. — This section is referred to in § 19-114.

In general. — Today's underlying policy for the statutory elective share of a surviving spouse includes not only protection against disinheritance and assurance of financial security, but also recognizes the contributions of the spouse to the acquisition of decedent's wealth, better described as the marital estate in some cases. In re Henderson, 115 WLR 1409 (Super. Ct. 1987).

Right to renounce personal. — The right to renounce is a purely personal one. Sarbacher v. McNamara, App. D.C., 564 A.2d 701 (1989).

Time for renunciation. — The beneficiary of a will may renounce a share under the will at any time, even before it is offered for probate. Sarbacher v. McNamara, App. D.C., 564 A.2d 701 (1989).

Renunciation required where bequest not valueless. — The purported devise or bequest must have no value to the beneficiary or cause “nothing” to pass under the will in order for renunciation to be unnecessary under subsection (d). Sarbacher v. McNamara, App. D.C., 564 A.2d 701 (1989).

Bequest to surviving spouse held in trust by the remainderman, with income payable at the remainderman's discretion, was not illusory and spouse was required to renounce the bequest in order to obtain his statutory share. Sarbacher v. McNamara, App. D.C., 564 A.2d 701 (1989).

Where a standard common disaster clause required husband to survive his wife for 30 days in order to be entitled to receive income under the trust in her will, he had a life estate as a result of the right to have his needs met if he survived his wife by 30 days; it could not be said that nothing could pass because the trust

was valueless or invalid and thus, to obtain his statutory share, husband had to renounce his right under the will. *Sarbacher v. McNamara*, App. D.C., 564 A.2d 701 (1989).

Receipt of trust income not necessary. — A beneficiary need not actually receive trust income to render the bequest valuable; indeed, the bequest need not even be equivalent to or exceed the spousal share. *Sarbacher v. McNamara*, App. D.C., 564 A.2d 701 (1989).

Purpose of marital deduction. — Congress adopted the marital deduction to provide an opportunity for the equalization of the tax treatment of estates. *Del Mar v. United States*, 390 F.2d 466 (D.C. Cir.), cert. denied, 393 U.S. 828, 89 S. Ct. 92, 21 L. Ed. 2d 99 (1968).

Factors in determining whether inter vivos transfer improper. — Factors controlling the determination of whether an inter vivos transfer was an improper circumvention of the marital rights of the surviving spouse include the "completeness" of the transfer, the motive for the transfer, the participation by transferee in an alleged fraud on the surviving spouse, the time between the transfer and the death, and the degree to which surviving spouse is left without an interest in the decedent's property or other means of support. *Windsor v. Leonard*, 475 F.2d 932 (D.C. Cir. 1973).

Trust assets excluded from "net estate." — When a wife, in creating a trust, reserved a power of revocation, a right to all income during her lifetime, a right to withdraw from the principal, and a right to amend the terms of the trust, the trust was not an improper evasion of the surviving husband's statutory rights when he renounced his rights under the wife's will. Thus, the trust assets were properly excluded from the wife's "net estate" in determining the husband's statutory share. *Windsor v. Leonard*, 475 F.2d 932 (D.C. Cir. 1973).

Renunciation by conservator. — Under the pecuniary approach the courts award the incompetent spouse the share of the deceased spouse's estate which has the largest monetary value. The pecuniary approach is the more fair and equitable. It offers not only the benefits of judicial economy because of its straightforward application, but more importantly, it preserves and safeguards the equitable rights of an incompetent surviving spouse in the marital es-

tate. In *re Henderson*, 115 WLR 1409 (Super. Ct. 1987).

As an equitable matter, the date for computing the 6-month period for renunciation or election, should be the date the conservator was appointed rather than the date the spouse's will was admitted to probate. In *re Henderson*, 115 WLR 1409 (Super. Ct. 1987).

Subsection (c) does not require that a conservator have court approval before making the election in the first instance. Instead, the statute requires only the renunciation or election be filed within 6 months of the will having been admitted to probate. In *re Henderson*, 115 WLR 1409 (Super. Ct. 1987).

Where the surviving spouse was incompetent, this section did not require conservator to have received prior court authorization before any renunciation was effective to toll the statute. *Spencer v. Williams*, App. D.C., 569 A.2d 1194 (1990).

Death of beneficiary prior to ratification. — Where an incompetent surviving spouse, acting through her conservator, filed her election to renounce the will while she was still alive, her death while the motion for ratification of the election was under advisement did not affect the court's analysis. *Spencer v. Williams*, App. D.C., 569 A.2d 1194 (1990).

Spouse's best interest. — Absent clear evidence that the incompetent spouse's interests or desires are otherwise, courts should presume that the option which is in the spouse's best interest is the one that would provide the spouse with the greater share of the estate. *Spencer v. Williams*, App. D.C., 569 A.2d 1194 (1990).

Failure to renounce. — Where alleged common-law husband failed within the statutory six-month period to file a written renunciation with the Probate Division renouncing the bequest made to him by decedent in her will, and announcing his election instead to take his statutory or dower interest in her estate, the trial court properly denied the claim. *Coates v. Watts*, App. D.C., 622 A.2d 25 (1993).

Cited in *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980); *Interdonato v. Interdonato*, App. D.C., 521 A.2d 1124 (1987); *Duggan v. Keto*, App. D.C., 554 A.2d 1126 (1989); *Dickson v. Mintz*, App. D.C., 634 A.2d 1243 (1993).

§ 19-114. Rights of surviving spouse if there is no renunciation.

A surviving spouse who does not renounce as provided by section 19-113 is entitled to the benefit of all provisions in his favor in the will of the deceased spouse and shall share, in accordance with sections 19-301, 19-302, 19-303,

19-304, and 20-1901, in any estate of the deceased spouse undisposed of by the will. (Sept. 14, 1965, 79 Stat. 697, Pub. L. 89-183, § 1; 1973 Ed., § 19-114.)

Cross references. — As to right of dower, see § 19-102.

Section references. — This section is referred to in §§ 19-112 and 19-113.

References in text. — The reference to

section 20-1901, appearing near the end of this section, is no longer accurate in light of the revisions of Title 20 by the Act of June 24, 1980, D.C. Law 3-72 and by D.C. Law 10-241.

§ 19-115. Definition.

For purposes of this chapter "Probate Court" means the Superior Court of the District of Columbia. (July 29, 1970, 84 Stat. 566, Pub. L. 91-358, title I, § 148 (2)(A); 1973 Ed., § 19-115.)

CHAPTER 3. INTESTATES' ESTATES.

Sec.

- 19-301. Course of descents generally.
- 19-302. When surviving spouse entitled to whole.
- 19-303. When surviving spouse entitled to one-third.
- 19-304. When surviving spouse entitled to one-half.
- 19-305. Distribution of surplus after payment to surviving spouse.
- 19-306. Children to share equally.
- 19-307. Grandchildren's share.
- 19-308. Share of father and mother.
- 19-309. Share of brother or sister or their descendants.
- 19-310. Brothers and sisters to share equally.
- 19-311. Share of collateral relations.

Sec.

- 19-312. Share of grandfather and grandmother.
- 19-313. Death of distributee before distribution.
- 19-314. Share of posthumous children.
- 19-315. No distinction between whole- and half-blood.
- 19-316. Share of children born out of wedlock; their heirs; mother; father.
- 19-317. Trust estates.
- 19-318. Antenuptial children.
- 19-319. Advancements.
- 19-320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers.
- 19-321. Descent through alien ancestor no bar.

§ 19-301. Course of descents generally.

The real estate in the District of Columbia, of a deceased person, male or female, if not devised, shall descend in fee simple, and the surplus of the personal estate of a deceased resident of the District, if not bequeathed, shall be distributed, to the surviving spouse, children, and other persons in the manner provided by this chapter. The heirs specified by this section take the real estate as tenants in common in the same proportions as they take the surplus personal estate as provided by this chapter. (Sept. 14, 1965, 79 Stat. 697, Pub. L. 89-183, § 1; 1973 Ed., § 19-301; June 24, 1980, D.C. Law 3-72, § 204(b), 27 DCR 2155; Apr. 30, 1988, D.C. Law 7-104, § 5(b), 35 DCR 147.)

Cross references. — As to inheritance by adopted children, see § 16-312.

As to distribution of proceeds in action for wrongful death, see § 16-2703.

As to right of dower, see § 19-102.

As to renunciations, see § 19-113.

As to distribution of death benefits of fraternal benefit association, see § 35-1201.

Section references. — This section is referred to in §§ 14-504, 19-114, and 19-317.

Legislative history of Law 3-72. — See note to § 19-101.

Legislative history of Law 7-104. — See note to § 19-107a.

Construction of section. — This section cannot be interpreted so as to allow for the non-judicial disposition of an estate that comprises more property than contemplated by the express exception in § 20-357. *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987).

Cited in *Jackson v. Young*, App. D.C., 546 A.2d 1009 (1988); *Leeks v. Leeks*, App. D.C., 570 A.2d 271 (1989); *Spencer v. Williams*, App. D.C., 569 A.2d 1194 (1990); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 19-302. When surviving spouse entitled to whole.

When the intestate leaves a surviving spouse and no child, parent, grandchild, brother, or sister, or the child of a brother or sister of the intestate, the surviving spouse is entitled to the whole. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; 1973 Ed., § 19-302.)

Section references. — This section is referred to in §§ 14-504 and 19-114.

§ 19-303. When surviving spouse entitled to one-third.

When the intestate leaves a surviving spouse and a child, or a descendant of a child, the surviving spouse is entitled to one-third. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; 1973 Ed., § 19-303.)

Section references. — This section is referred to in §§ 14-504 and 19-114.

Purpose of marital deduction. — Congress adopted the marital deduction to provide an opportunity for the equalization of the tax treatment of estates. *Del Mar v. United States*, 390 F.2d 466 (D.C. Cir.), cert. denied, 393 U.S. 828, 89 S. Ct. 92, 21 L. Ed. 2d 99 (1968).

Section not modified. — The purpose of the marital deduction does not modify the meaning of this section. *Del Mar v. United States*, 390 F.2d 466 (D.C. Cir.), cert. denied, 393 U.S. 828, 89 S. Ct. 92, 21 L. Ed. 2d 99 (1968).

Cited in *Wilson v. Thornton*, App. D.C., 416 A.2d 228 (1980); *Saunders v. Air Fla., Inc.*, 558 F. Supp. 1233 (D.D.C. 1983).

§ 19-304. When surviving spouse entitled to one-half.

When the intestate leaves a surviving spouse and no child or descendant of the intestate, but a father or mother, or brother or sister, or child of a brother or sister, the surviving spouse is entitled to one-half. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; 1973 Ed., § 19-304.)

Section references. — This section is referred to in § 19-114.

Share excluded from federal estate tax. — Where the decedent died intestate survived by her husband, 2 grandnephews, and 6 nieces, and the surviving husband was entitled to one-half of the estate under this section, and

such one-half qualified for the federal estate tax marital deduction, the share of the husband was not to bear any part of the federal estate tax. *In re Estate of Collins*, 269 F. Supp. 633 (D.D.C. 1967).

Cited in *In re Henderson*, 115 WLR 1409 (Super. Ct. 1987).

§ 19-305. Distribution of surplus after payment to surviving spouse.

The surplus, above the share of the surviving spouse, or the whole surplus, when there is no surviving spouse, descends and is distributed as provided by this chapter and by section 19-701. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; 1973 Ed., § 19-305.)

Cited in *In re Estate of Shorter*, App. D.C., 444 A.2d 954 (1982); *Saunders v. Air Fla., Inc.*, 558 F. Supp. 1233 (D.D.C. 1983).

§ 19-306. Children to share equally.

When the intestate leaves children and no other descendants, the surplus is divided equally among them. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; 1973 Ed., § 19-306.)

Cited in *Watts v. Veneman*, 334 F. Supp. 482 (D.D.C. 1971), modified, 476 F.2d 529 (D.C. Cir. 1973); *In re Estate of Shorter*, App. D.C., 444

A.2d 954 (1982); *Saunders v. Air Fla., Inc.*, 558 F. Supp. 1233 (D.D.C. 1983); *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

§ 19-307. Grandchildren's share.

(a) Subject to subsection (b) of this section, and to section 19-319, when the intestate leaves a child and a child of a deceased child, the child of the deceased child takes such share as his deceased parent would, if living, be entitled to, and every other descendant in existence at the death of the intestate stands in the place of his deceased ancestor.

(b) Those in equal degree claiming in the place of an ancestor take equal shares. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; 1973 Ed., § 19-307.)

Cross references. — As to advancement as satisfaction of legacy, see § 18-307.

Cited in *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

§ 19-308. Share of father and mother.

When the intestate leaves no child, or descendant, the whole is divided equally between the father and mother or their survivor. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; Sept. 10, 1966, 80 Stat. 738, Pub. L. 89-567, § 1; 1973 Ed., § 19-308.)

§ 19-309. Share of brother or sister or their descendants.

When the intestate leaves a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father or mother, the brother, sister, or child or descendant of a brother or sister is entitled to the whole. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; 1973 Ed., § 19-309.)

Cited in *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

§ 19-310. Brothers and sisters to share equally.

Each brother and sister of the intestate is entitled to an equal share, and the children or descendants of a brother or sister of the intestate, stand in the place of their deceased parents respectively. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; 1973 Ed., § 19-310.)

Cited in *Richards v. Liles*, App. D.C., 435 A.2d 379 (1981).

§ 19-311. Share of collateral relations.

After children, descendants, parents, brothers, and sisters of the deceased and their descendants, all collateral relations in equal degree share, and representation among the collaterals is not allowed. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-311.)

Cited in *Hill v. White*, App. D.C., 589 A.2d 918 (1991).

§ 19-312. Share of grandfather and grandmother.

The grandparents, or such of them as survive, share alike where there are no collaterals. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-312.)

§ 19-313. Death of distributee before distribution.

When a person entitled to distribution dies before the distribution is made, his share goes to his estate or legal representatives. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-313.)

§ 19-314. Share of posthumous children.

A right in the inheritance to real or personal property does not accrue to or vest in a person other than the children of the intestate and their descendants, unless the person is in being and capable in law to take as heir or distributee at the time of the intestate's death; but a child or descendant of the intestate born after the death of the intestate has the same right of inheritance as if born before his death. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-314.)

§ 19-315. No distinction between whole- and half-blood.

There is no distinction between the kindred of the whole- and the half-blood. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-315.)

§ 19-316. Share of children born out of wedlock; their heirs; mother; father.

Children born out of wedlock and the heirs of children born out of wedlock are capable of taking real and personal estate by inheritance from their mother or from their father if parenthood has been established, or from each other, or from heirs of each other, as the case may be, in like manner as if born in lawful wedlock, and the mother and such father, and their respective heirs, are capable of inheriting from such children. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-316; Oct. 1, 1976, D.C. Law 1-87, § 22(a), (c), 23 DCR 2544; June 13, 1978, D.C. Law 2-78, § 2, 24 DCR 9282; June 24, 1980, D.C. Law 3-72, § 204(c), 27 DCR 2155.)

Cross references. — As to antenuptial children, see § 19-318.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-78. — Law 2-78, the "Paternity Proceedings Clarifying Amendment Act of 1978," was introduced in Council and assigned Bill No. 2-232, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 21, 1978, and March 7, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-172 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-72. — Law

3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Constitutionality. — This section is not unconstitutional. *Watts v. Veneman*, 334 F. Supp. 482 (D.D.C. 1971), modified, 476 F.2d 529 (D.C. Cir. 1973); *Severance v. Weinberger*, 362 F. Supp. 1348 (D.D.C. 1973).

Application. — This section applies prospectively. *In re Estate of Plater*, 113 WLR 1429 (Super Ct. 1985).

Powers of natural father. — While the natural father could designate a child as the sole beneficiary under his will, he could not, absent adoption, make the child his heir at law. *In re J.H.*, App. D.C., 313 A.2d 874 (1974).

Claims of children born out of wedlock take precedence over claim of decedent's mother. — Where the decedent, insured under the Federal Employees Group Life Insurance Act, died leaving no widow and without having designated a beneficiary of his policy, the claims of his children, who are born out of wedlock, but who had been acknowledged by him, are entitled to take precedence over the claim of his mother. *Green v. Green*, App. D.C., 365 A.2d 610 (1976).

Paternity determinations after death of putative father. — This section provides for parenthood determinations subsequent to death of putative father, and § 16-909(a) sets forth the burden of proof to be met by child born out of wedlock. *Gilliam v. Branton*, App. D.C., 470 A.2d 743 (1983).

No Superior Court division may declare that deceased insured was father of illegitimate child; however, the Court can certify a complaint which states a cognizable civil cause of action for trial on the issue of whether a support obligation arose during the life of the

insured, so as to entitle the illegitimate child, if acknowledged by him, to insurance proceeds. *Carrington v. Metropolitan Life Ins. Co.*, 111 WLR 53 (Super. Ct. 1983).

Jurisdiction of Probate Division limited to declaring whether paternity established before decedent's death. — The jurisdiction of the Probate Division of the Superior Court is limited to declaring, in a decedent's estate, whether parenthood of an illegitimate child was established before the decedent died and therefore whether a claimed illegitimate child legally is an heir of the decedent entitled to inherit therefrom. *In re Estate of Glover*, 110 WLR 2809 (Super. Ct. 1982).

Biological father of illegitimate child not automatically treated as legal parent.

— In the District of Columbia the biological father of an illegitimate child is not automatically treated as the legal "parent" for all purposes of law. *Butler v. Metropolitan Life Ins. Co.*, 500 F. Supp. 661 (D.D.C. 1980), but see, *Mobley v. Metropolitan Life Ins. Co.*, 907 F. Supp. 495 (D.D.C. 1995).

Facts establishing paternity must have existed prior to father's death. — For a child born out of wedlock to inherit from a putative father, the facts and circumstances establishing parenthood must have come into existence prior to the father's death. The child is not required to bring a paternity action prior to the putative father's death. *Gilliam v. Branton*, App. D.C., 470 A.2d 743 (1983).

Public documents and relatives' testimony may be considered in paternity determination. — In addition to acknowledgment by the putative parent, public documents such as birth certificates and testimony of the claimant's and the putative father's relatives should be considered in determining whether the claimant has established paternity by a preponderance of the evidence. *Gilliam v. Branton*, App. D.C., 470 A.2d 743 (1983).

Cited in *In re D.M.*, App. D.C., 562 A.2d 618 (1989).

§ 19-317. Trust estates.

When a trustee is seized of the naked legal estate in real estate in fee simple, and dies intestate thereof, the legal estate descends according to section 19-301 to the persons who would inherit the beneficial estate if it were vested in them. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-317.)

§ 19-318. Antenuptial children.

When a man has a child by a woman whom he afterwards marries, the child, if acknowledged by the man, is, in virtue of the marriage and acknowledgment, legitimated and capable in law of inheriting and transmitting heritable

property as if born in wedlock. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-318.)

Establishment of relationship of natural parent and natural child. — In order to establish the relationship of natural parent and natural child, for all purposes under the law, an individual can either: (1) Adopt the child; or (2)

marry the child's mother and acknowledge the child. *Butler v. Metropolitan Life Ins. Co.*, 500 F. Supp. 661 (D.D.C. 1980), but see, *Mobley v. Metropolitan Life Ins. Co.*, 907 F. Supp. 495 (D.D.C. 1995).

§ 19-319. Advancements.

(a) If a child or descendant has been advanced by the intestate during the intestate's lifetime, by settlement or portion, real estate or personal estate, the value thereof is reckoned for the purposes of descent and distribution as part of the estate of the intestate descendible and to be divided among his heirs or distributed to his distributees. Where the advancement is equal to or greater than a share, the child or descendant is excluded from any further share in the estate of the intestate and is not liable to refund any part of the amount so advanced; but the surviving spouse has no advantage by bringing the advancement into reckoning. Where the advancement is less than a share, the child or descendant receives so much, only, of the personal estate, and inherits so much, only, of the real estate, of the intestate, as is sufficient to make all the shares of all the children in the whole property, including the advancement, equal. The value of real or personal estate so advanced shall be estimated according to the worth thereof when given. Maintenance or education of a child or descendant, or giving him money or real estate, without a view to a portion or settlement in life, is not an advancement.

(b) Where an advancement to be adjusted, as provided by subsection (a) of this section, consisted of real estate, the adjustment shall be made out of the real estate descendible to the heirs. Where the advancement was in personal estate, the adjustment shall be made out of the surplus of the personal estate to be distributed to the distributees. Where either species of estate is insufficient to enable the adjustment to be fully made, the deficiency shall be adjusted out of the other. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; 1973 Ed., § 19-319.)

Section references. — This section is referred to in § 19-307.

§ 19-320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers.

(a) A person convicted of felonious homicide of another person, by way of murder or manslaughter, takes no estate or interest in property of any kind from that other person by way of:

- (1) inheritance, distribution, devise, or bequest; or
- (2) remainder, reversion, or executory devise dependent upon the death of the other person.

The estate, interest, or property to which the person so convicted would have succeeded or would have taken in any way from or after the death of the

decendent goes, instead, as if the person so convicted had died before the decendent.

(b) Policies of insurance directly or indirectly procured by a person convicted as specified by subsection (a) of this section, for his own benefit or payable to him upon the life of the person killed by him, are void.

(c) This section does not affect the rights of bona fide purchasers of property specified by subsection (a) of this section, for value and without notice. (Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1; 1973 Ed., § 19-320.)

Effect of section. — Enactment of this section did not repeal common law. *Napoleon v. Heard*, App. D.C., 455 A.2d 901 (1983).

The common law was not displaced by this section; the result under this section and the common law is the same. *Gallimore v. Washington*, App. D.C., 666 A.2d 1200 (1995).

Assuming the D.C. Congress did not cover rights of survivorship under this section, Congress also did not intend to “replace” the common law with respect to the treatment of rights of survivorship. *Gallimore v. Washington*, App. D.C., 666 A.2d 1200 (1995).

Insurance proceeds. — Section prohibits recovery of insurance proceeds by one who had feloniously killed insured. *Napoleon v. Heard*, App. D.C., 455 A.2d 901 (1983).

Insurance proceeds fall well within generic statement “interest or property” under subsection (a). *Napoleon v. Heard*, App. D.C., 455 A.2d 901 (1983).

Effect of conviction. — A conviction for murder or manslaughter is a complete statutory bar to inheriting from the victim under the D.C. slayer statute. *Cheatle v. Cheatle*, App. D.C., 662 A.2d 1362 (1995).

Absence of conviction. — In the absence of a conviction, under the common law, a finding by a preponderance of the evidence in a civil proceeding that one intentionally took the life of another required the killer to forfeit his or her rights as a beneficiary of the victim. *Cheatle v. Cheatle*, App. D.C., 662 A.2d 1362 (1995).

Murder of a joint tenant. — Persons con-

victed of murdering a joint tenant may not take an interest in the property through the right of survivorship. *Washington v. Gallimore*, 122 WLR 1125 (Super. Ct. 1994).

Where husband and wife had acquired property as tenants by the entirety, and where the deed purported to convey the property to them as husband and wife, husband could not claim a share in the property after having killed his wife. *Washington v. Gallimore*, 122 WLR 1125 (Super. Ct. 1994).

Gross neglect, without conviction, not sufficient to mandate forfeiture. — Where there has been no conviction for the criminal offense of involuntary manslaughter, a finding that the death of the testator was the result of gross neglect by the beneficiary is not sufficient to mandate forfeiture of the beneficiary’s right to take under the terms of a will. *Cheatle v. Cheatle*, App. D.C., 662 A.2d 1362 (1995).

Where there has been no conviction of murder or manslaughter, a finding of gross negligence which caused death, where no intent to kill or harm has been shown, is insufficient as a matter of law to require forfeiture of the beneficiary’s right to take from the deceased. *Cheatle v. Cheatle*, App. D.C., 662 A.2d 1362 (1995).

Cited in *In re Estate of Shorter*, App. D.C., 444 A.2d 954 (1982); *Turner v. Travelers Ins. Co.*, App. D.C., 487 A.2d 614 (1985); *Penn Mut. Life Ins. Co. v. Abramson*, App. D.C., 530 A.2d 1202 (1987); *Penn Mut. Life Ins. Co. v. Abramson*, 837 F.2d 484 (D.C. Cir. 1987).

§ 19-321. Descent through alien ancestor no bar.

In making title by descent it is no bar to a party claiming as heir that an ancestor, whether living or dead, through whom he derives his descent from the intestate, is or has been an alien. (Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1; 1973 Ed., § 19-321.)

CHAPTER 5. SIMULTANEOUS DEATHS; UNIFORM LAW.

Sec.

19-501. No sufficient evidence of survivorship.

19-502. Survival of beneficiaries.

19-503. Joint tenants or tenants by the entirety.

19-504. Insurance policies.

Sec.

19-505. Chapter does not apply if decedent provides otherwise.

19-506. Short title; effective date; chapter not retroactive; construction.

§ 19-501. No sufficient evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death and there is not sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise by this chapter. (Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1; 1973 Ed., § 19-501.)

§ 19-502. Survival of beneficiaries.

Where property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is not sufficient evidence that the two have died otherwise than simultaneously, the beneficiary is deemed not to have survived. Where there is not sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of the beneficiaries had survived. (Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1; 1973 Ed., § 19-502.)

§ 19-503. Joint tenants or tenants by the entirety.

Where there is not sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed, or descend as the case may be, one-half as if one had survived and one-half as if the other had survived. Where there are more than two joint tenants and all have so died the property thus distributed or descended shall be in the proportion that one bears to the whole number of joint tenants.

The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the others. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1; 1973 Ed., § 19-503.)

§ 19-504. Insurance policies.

When the insured and the beneficiary in a policy of life or accident insurance have died and there is not sufficient evidence that they have died otherwise

than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1; 1973 Ed., § 19-504.)

§ 19-505. Chapter does not apply if decedent provides otherwise.

This chapter does not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this chapter, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1; 1973 Ed., § 19-505.)

§ 19-506. Short title; effective date; chapter not retroactive; construction.

(a) This chapter may be cited as the "District of Columbia Uniform Simultaneous Death Act". It is in effect in the District of Columbia as of March 28, 1958, and it does not apply to the distribution of property of a person who died before that date.

(b) Where there is a conflict or inconsistency between a provision of this chapter and other provisions of this Part or other law, the provision of this chapter controls. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1; 1979 Ed., § 19-506.)

Cross references. — As to action by joint tenants for accounting, see § 16-101.
As to joint contracts, see § 16-2101.

As to negligence causing death, see §§ 16-2701 and 16-2702.

CHAPTER 7. ESCHEAT.

Sec.

19-701. Escheatment generally.

§ 19-701. Escheatment generally.

Where there is no surviving spouse or relations of the intestate within the fifth degree, reckoned by counting down from the common ancestor to the more remote, the surplus of real and personal property escheats to the District of Columbia to be used by the Mayor of the District of Columbia for the benefit of the poor. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 566; Pub. L. 91-358, title I, § 148(1); 1973 Ed., § 19-701; Apr. 30, 1988, D.C. Law 7-104, § 5(c), 35 DCR 147.)

Section references. — This section is referred to in § 19-305.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Escheated Estates Fund Application Screening Committee established. — See Mayor’s Order 83-285, December 7, 1983.

Amendment of Mayor’s Order 81-39, Escheated Estates Fund. — See Mayor’s Order 85-71, May 24, 1985, as amended by Mayor’s Order 87-188, August 6, 1987.

Amendment of establishment of Escheated Estates Fund Application Screening Committee. — See Mayor’s Order 86-128, August 8, 1986.

Representation of District in probate and escheat cases. — See Mayor’s Order 85-190, December 3, 1985.

Ineffective attempt to disinherit siblings. — Testator’s attempt to disinherit his caveator brothers and their heirs was ineffective where he made no gift over of the forfeited estate or any other disposition of the estate so as to defeat those who could possibly inherit his estate. *Wilkes v. Freer*, 271 F. Supp. 602 (D.D.C. 1967).

Cited in *Knupp v. District of Columbia*, App. D.C., 578 A.2d 702 (1990); *District of Columbia v. Estate of Parsons*, App. D.C., 590 A.2d 133 (1991).

TITLE 20. PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES.

Chapter

1. General Provisions..... §§ 20-101 to 20-109.
3. Opening the Estate..... §§ 20-301 to 20-357.
4. Supervised and Unsupervised Administration..... §§ 20-401 to 20-406.
5. The Personal Representative and Special
Administrator; Appointment, Control
and Termination of Authority..... §§ 20-501 to 20-534.
7. Administration of the Estate..... §§ 20-701 to 20-753.
9. Claims..... §§ 20-901 to 20-914.
11. Special Provisions Relating to Distribution..... §§ 20-1101 to 20-1107.
13. Closing the Estate..... §§ 20-1301 to 20-1305.

CHAPTER 1. GENERAL PROVISIONS.

Sec.

- 20-101. Definitions.
- 20-102. Verification.
- 20-103. Notice.
- 20-104. Presumption.
- 20-105. Devolution of property at death.

Sec.

- 20-106. Preference.
- 20-107. Right to seek Court resolution.
- 20-108. Appointment of guardian ad litem.
- 20-108.1. Effect of fraud and evasion.
- 20-109. Effective date.

§ 20-101. Definitions.

When used in this title, unless otherwise apparent from the context the term:

(a) "Abbreviated probate proceeding" means the type of proceeding defined in section 20-311.

(b) "Court" means the Probate Division of the Superior Court of the District of Columbia.

(c) "Heir" means a person entitled to property of an intestate decedent pursuant to chapter 3 of title 19.

(d)(1) "Interested person" means (A) any person named in the will to serve as personal representative, until the appointment of a personal representative; (B) a personal representative; (C) any legatee in being, whether such legatee's interest is vested or contingent, until the legacy is paid in full; (D) an heir, except that an heir ceases to be an interested person once a will has been admitted to probate; provided, that, an heir is an interested person for the purpose of any proceeding to contest the validity of the will and following any determination that the decedent died intestate as to some or all of the estate; and (E) any creditor of the decedent, including those persons whose rights accrue at the time of death, who has timely presented a claim in excess of \$500 that has not been barred or discharged.

(2)(A) If an interested person, as described in paragraph (1) of this subsection, is legally disabled, the following persons shall also be interested

persons unless the Court has appointed a guardian ad litem:

(i) the judicially appointed guardian, committee or conservator for such person, if any; or

(ii) if there is no judicially appointed guardian, committee or conservator, then the parent or other person having assumed responsibility for such person, or an attorney-in-fact for such person (subject to the terms of the power of attorney), or any other person with legal authority to act for such person.

(B) If the Court has appointed a guardian ad litem under section 20-108, the guardian ad litem shall be an interested person.

(C) Any guardian, guardian ad litem, committee, conservator, parent, attorney-in-fact, or other legal representative of an interested person who is under any legal disability may act on behalf of such interested person in all matters under this title without the need for any specific authorization from any court, except to the extent otherwise prohibited by a court or by the instrument granting and defining the scope of such representative's powers.

(3) An heir or legatee whose interest is contingent solely on whether some other heir or legatee survives the decedent or survives by a stated period shall not be an interested person unless and until the other heir or legatee dies within such period.

(e) "Intestate decedent" means a person who dies without leaving a valid will.

(f) "Legacy" means a disposition of property made in a will.

(g) "Legatee" means the surviving spouse of the decedent or a person who, under the terms of a will, would receive a legacy. Legatee includes a trustee of a trust created under or referred to in the decedent's will but not a beneficiary of the trust unless each trustee is also a petitioning party or acting personal representative.

(h) "Letters" means the official instrument by which a personal representative is appointed by the Court to administer the estate of a decedent.

(i) "Metropolitan area" means Prince Georges County, and Montgomery County, Maryland; Arlington County, Fairfax County, the City of Fairfax, the City of Falls Church, and the City of Alexandria, Virginia.

(j) "Personal representative" means a person, other than a special administrator, who has been appointed by the Court to administer the estate of a decedent.

(k) "Probate" means the admission to record of a decedent's will or the determination of a decedent's intestacy.

(l) "Property" means both real and personal property and any interest in such property that is owned by the decedent and that does not pass at the time of the decedent's death to another person by the terms of the instrument under which it is held, or by operation of law.

(m) "Register" means the Register of Wills.

(n) "Residuary legatee" means the person to whom a testate decedent bequeaths the surplus of such decedent's estate, subject to all debts and other legacies specifically mentioned in the will.

(o) "Rules" means the rules promulgated by the Superior Court of the District of Columbia applicable to the Probate Division of that Court.

(p) "Special administrator" means an administrator appointed as provided in section 20-531.

(q) "Special appraiser" means an appraiser who is not an employee of the Office of the Register.

(r) "Standard probate proceeding" means the type of proceeding defined in section 20-321.

(s) "Standing appraiser" means an appraiser who is an employee of the Office of the Register.

(t) "Testate decedent" means a person who dies leaving a valid will.

(u) "Supervised administration" or "supervised personal representative" means that the administration and the representative have been ordered to be supervised in accordance with this title.

(v) "Unsupervised personal representative" means a personal representative who is not subject to continued court supervision pursuant to this title. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(a)-(d), 42 DCR 63; Apr. 18, 1996, D.C. Law 11-110, § 25(a), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 19(a), 44 DCR 1271.)

Section references. — This section is referred to in §§ 20-108 and 20-502.

Effect of amendments. — D.C. Law 10-241 added "as to some or all of the estate; and" at the end of (d)(1)(D); added (d)(1)(E); added the language beginning "or an attorney-in-fact" at the end of (d)(2)(A)(ii); added (d)(2)(C); and added (u) and (v).

D.C. Law 11-110 validated a previously made punctuation change in (d)(1)(E).

D.C. Law 11-255 inserted "of this subsection" in the introductory paragraph of (d)(2)(A).

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5,

1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-108.1.

Uniform Disclaimer of Property Interests. — See § 21-2091 et seq.

Exculpatory clause. — The courts generally enforce an exculpatory or immunity clause that relieves a personal representative from personal liability for losses resulting from failure to meet a required standard of care, unless the clause is contrary to statute or public policy. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Nonjudicial distribution of estate property. — Because the Probate Code requires judicial appointment of a personal representative as a prerequisite to probate and subjects that representative to the court's authority, the possibility of a nonjudicial distribution of estate property is precluded by law. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Will which granted plenary powers to personal representative that made him unaccount-

able to the court was in conflict with the Probate Code and therefore invalid. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Interested person. — Because the attorney to an estate is not among the four categories listed under subsection (d)(1) of this section as an "interested person," the probate judge is precluded under the Probate Reform Act from considering an "exception" that has been filed by the attorney pursuant to § 20-751. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Legatees whose potential property interests flowed from a will could not proceed directly against the trustee of a *pourover inter vivos* trust as if the legatees were beneficiaries under

the trust; instead, the legatees had to proceed in the first instance against the entities with whom the legatees had a fiduciary relationship — the personal representatives of the probate estate — in order to compel the representatives to proceed against the trustee on behalf of the estate. *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

Cited in *Young v. Firemen's Ins. Co.*, App. D.C., 463 A.2d 675 (1983); *In re Estate of Burton*, App. D.C., 541 A.2d 599 (1988); *Irving v. District of Columbia*, App. D.C., 665 A.2d 980 (1995), cert. denied, — U.S. —, 116 S. Ct. 1264, 134 L. Ed. 212 (1996).

§ 20-102. Verification.

(a) When a writing is required by this title to be verified, verification shall be sufficient if the writing is signed by the person required to make the verification and contains the following representation:

"I do solemnly declare and affirm under penalty of law that the contents of the foregoing document are true and correct to the best of my knowledge, information, and belief."

(b) Any person who in making a verification under this section willfully and contrary to the verification states any material matter that such person does not believe to be true shall be guilty of an offense. Any person convicted of this offense shall be punished by imprisonment for not less than 2 or more than 10 years. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-905.

Legislative history of Law 3-72. — See note to § 20-101.

Verification of complaint by corporate party. — Subsection (a)'s requirement that the person required to make verification must be an actual party to the suit is met, where a corporate party is involved, when the litigating attorney representing the corporation verifies the complaint. *Easter Seal Soc'y for Disabled Children v. Berry*, App. D.C., 627 A.2d 482 (1993).

Imperfect verification. — An imperfect verification is not a jurisdictional defect; accordingly, even though appellants filed their complaint on the last day permitted by the statute of limitations, they could have later filed an amended verification without the action being time-barred. *Easter Seal Soc'y for Disabled Children v. Berry*, App. D.C., 627 A.2d 482 (1993).

Cited in *Launay v. Launay, Inc.*, App. D.C., 497 A.2d 443 (1985); *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987); *In re Estate of Phillips*, App. D.C., 532 A.2d 654 (1987).

§ 20-103. Notice.

(a) *First notice.* — Unless personal service or notice by publication is expressly required by this title or by the Rules, the first notice required or permitted to be given to any person under this title shall be sufficient if deposited as registered or certified mail, postage prepaid, return receipt requested, addressed to the addressee at the address last known to the sender, with delivery restricted to the addressee.

(b) *Subsequent notice.* — Any subsequent notice to such person in accordance with this title shall be sufficient if deposited as ordinary mail, postage

prepaid, addressed either to the same address at which the first notice was received, as evidence by return receipt from the post office or, if the sender has received written notice from the addressee of a change of address, to the new address.

(c) *Failure of notice.* — If no return receipt is received apparently signed by the addressee, and there is no proof of actual notice, no action taken in any proceeding under this title shall prejudice the rights of the person entitled to notice unless the sender verifies, to the satisfaction of the Court, that reasonable efforts to locate and warn the addressee of the pendency of the action have been made.

(d) *Notice to personal representative.* — A personal representative or special administrator is not required to give self notice.

(e) *Notice for contingent interests.* — If the interest of an heir or legatee is solely contingent on whether some other heir or legatee survives the decedent or some other event or period, any notice given before the contingent interest vests shall conclusively be deemed to have been given to the heir or legatee whose interest has been contingent. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(e), 42 DCR 63.)

Section references. — This section is referred to in § 20-704.

Effect of amendments. — D.C. Law 10-241 substituted “some other event or” for “survives by a stated” in (e).

Legislative history of Law 3-72. — See note to § 20-101.

Legislative history of Law 10-241. — See note to § 20-108.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-108.1.

§ 20-104. Presumption.

Unless otherwise expressly provided, whenever this title states that a fact shall be presumed, the presumption is rebuttable. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-101.

§ 20-105. Devolution of property at death.

Except as provided in section 20-357, all property of a decedent shall be subject to this title and, upon the decedent's death, shall pass directly to the personal representative, who shall hold the legal title for administration and distribution of the estate. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-101.

Abolition of non-judicial dispositions. — The plain language of this section, the legislative history, the statutory scheme and construction, and Maryland law after which the Probate Reform Act was modeled all point to the conclusion that any action respecting a decedent's

property requires the appointment of a personal representative pursuant to this section, and that non-judicial dispositions are abolished. *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987).

This section cannot be interpreted so as to allow for the non-judicial disposition of an estate that comprises more property than con-

templated by the express exception in § 20-357. *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987).

Exception to requirement of appointment of personal representative. — The only exception to the requirement of the appointment of a personal representative in this section is § 20-357, which provides that if the property of the decedent is not more than 2 cars, the mayor may transfer title to same and administration of the estate may be dispensed with. *Richardson v. Green*, 113 WLR 1973 (Super. Ct. 1985).

Exoneration. — The provisions of this section do not bear on the issue addressed by the doctrine of exoneration, and there is no basis for concluding that these provisions abolish the doctrine in this jurisdiction. *Martin v. Johnson*, App. D.C., 512 A.2d 1017 (1986).

This section and § 20-741, by not only placing on the personal representative the responsibility for maintaining the decedent's property until it is distributed but also authorizing him to pay the expenses of doing so, necessarily impose the cost of such maintenance on the entire estate when the property is subject to exoneration. *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

§ 20-106. Preference.

Except as provided in sections 20-343 and 20-703, there shall be no preference or priority between real and personal property. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(f), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 substituted "sections 20-343 and 20-703" for "sections 20-343, 20-703, and 20-742."

Legislative history of Law 3-72. — See note to § 20-101.

Legislative history of Law 10-241. — See note to § 20-108.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-108.1.

Abatement. — Legacies in the same class abate proportionally, absent proof that the decedent intended to give preference to one bequest. *Dickson v. Mintz*, App. D.C., 634 A.2d 1243 (1993).

Exoneration. — The provisions of this section do not bear on the issue addressed by the

Fraudulent sale by heirs. — This section operates to vest legal title to all of a decedent's property in the personal representative of the decedent's estate until the conclusion of a judicial distribution of that estate; thus, any claim that title legally vested in a subsequent purchaser through an heir who fraudulently sold the property under the doctrine of after-acquired title was unripe since the estate had vested in the personal representative and had not yet passed to the heir-at-law of decedent. *M.M. & G., Inc. v. Jackson*, App. D.C., 612 A.2d 186 (1992).

Expense of maintaining property. — When the testator's intent is to pass property whole or in kind to the devisee, without encumbrance, and when the property generates no income, there is no unfairness in permitting the residue to bear the expense of maintaining the property prior to distribution. *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

Cited in *In re Tyree*, App. D.C., 493 A.2d 314 (1985); *Robinson v. Carney*, App. D.C., 632 A.2d 106 (1993); *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996); *Lemp v. Keto*, App. D.C., 678 A.2d 1010 (1996).

doctrine of exoneration, and there is no basis for concluding that these provisions abolish the doctrine in this jurisdiction. *Martin v. Johnson*, App. D.C., 512 A.2d 1017 (1986).

Evidence insufficient to prove preference. — Because widow presented no evidence at trial and relied exclusively on the will and the record, she did not carry her burden of demonstrating by a preponderance of the evidence that her husband intended one bequest to have priority over any other bequest in the will. *Dickson v. Mintz*, App. D.C., 634 A.2d 1243 (1993).

Cited in *In re Estate of Burton*, App. D.C., 541 A.2d 599 (1988).

§ 20-107. Right to seek Court resolution.

(a) An interested person, the beneficiary of a trust, or the Register may, at any time, petition the Court for an order, following notice to interested persons and with or without a hearing, to resolve a question or controversy arising in

the course of a supervised or unsupervised administration of a decedent's estate.

(b) Any interested person in an unsupervised administration, any unpaid creditor of either the decedent or the estate whose claim is not barred, and the personal representative, may request Court action or assistance in connection with any specific issue related to the administration of the estate. Upon receiving such request, if the Court determines a hearing is necessary, the Court shall notify the personal representative and set a hearing on the matter (unless waived by all interested persons); the personal representative shall certify to the Court that the personal representative has given notice of the hearing to the interested persons, by certified mail or personal delivery at least 10 days prior to the hearing.

(c) Any request filed by an interested person, including any pleading described in this title as a petition, need not be in any particular format. It will be sufficient for the purpose intended as long as it is in writing and specifically identifies the particular issue or concern which the interested person wishes the Court to review or resolve. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(g), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 rewrote this section.

Legislative history of Law 3-72. — See note to § 20-101.

Legislative history of Law 10-241. — See note to § 20-108.1.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-108.1.

Cited in *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987); *Estate of Presgrave v. Stephens*, App. D.C., 529 A.2d 274 (1987); *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

§ 20-108. Appointment of guardian ad litem.

If it appears to the Court that there is an apparent conflict between an interested person under a legal disability and a person described in section 20-101(d)(2)(A), the Court may, in its discretion, appoint a guardian ad litem for the legally disabled person. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-101.

Legislative history of Law 3-72. — See note to § 20-101.

§ 20-108.1. Effect of fraud and evasion.

(a) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this title or if fraud is used to avoid or circumvent the provisions or purposes of this title, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during lifetime that may affect the succession to the decedent's estate.

(b) Notwithstanding the remedy provided in subsection (a) of this section, nothing in this title shall be construed to validate any document with respect to which there was any misrepresentation, fraudulent act, or illegal provision in connection with its execution.

(c) In addition to the remedy provided in subsection (a) of this section, any person convicted of a fraudulent act in connection with the collection, administration, distribution, or closing of an estate under this title and who thereby obtains property of another or causes another to lose property, shall be subject to the penalties set forth in section 122 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Code § 22-3822). (Mar. 21, 1995, D.C. Law 10-241, § 3(i), 42 DCR 63.)

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and

December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Application of Law 10-241. — Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

§ 20-109. Effective date.

This title shall apply only to an estate of a decedent who died on or after January 1, 1981. Title 20 of the D.C. Code enacted by virtue of An Act To enact Part III of the District of Columbia Code, entitled "Decedents' Estates and Fiduciary Relations", codifying the general and permanent laws relating to decedents' estates and fiduciary relations in the District of Columbia, approved September 14, 1965 (79 Stat. 703), and An Act To amend chapter 19 of title 20 of the District of Columbia Code to provide for distribution of a minor's share in a decedent's personal estate where the share does not exceed the value of \$1,000, approved August 11, 1971 (85 Stat. 307), shall apply to an estate of a decedent who died before January 1, 1981. (June 24, 1980, D.C. Law 3-72, § 402, 27 DCR 2155; Aug. 2, 1983, D.C. Law 5-24, § 3, 30 DCR 3341.)

Legislative history of Law 3-72. — See note to § 20-101.

Legislative history of Law 5-24. — Law 5-24, the "Technical and Clarifying Amendments Act of 1983," was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Cited in *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987); *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

CHAPTER 3. OPENING THE ESTATE.

Subchapter I. General Provisions.

- Sec.
 20-301. Scope.
 20-302. Necessity for probate.
 20-303. Order of priority for appointment of personal representative; persons excluded.
 20-304. Petition for probate.
 20-305. Complaint to contest the validity of a will.

Subchapter II. Abbreviated Probate Proceeding.

- 20-311. Nature of proceeding.
 20-312. Action on petition.

Subchapter III. Standard Probate Proceeding.

- 20-321. Nature of proceeding.
 20-322. When mandatory.
 20-323. Notice of request for standard probate; form.
 20-324. Action on petition.

Subchapter IV. Finality.

- Sec.
 20-331. Finality of abbreviated and standard probate proceedings.

Subchapter V. Foreign Personal Representatives.

- 20-341. Requirements.
 20-342. Powers of foreign personal representative.
 20-343. Publication and claims of creditors.
 20-344. Right of heir or legatee.

Subchapter VI. Small Estates.

- 20-351. General.
 20-352. Petition.
 20-353. Proceedings after petition.
 20-354. Duties of personal representatives.
 20-355. After-discovered property.
 20-356. Applicability of other provisions of title.
 20-357. Exception for motor vehicles.

*Subchapter I. General Provisions.***§ 20-301. Scope.**

This chapter applies to the opening of an estate which begins with the filing of a petition for probate by an interested person as provided in section 20-304 and results in the probate of a will or the determination of a decedent's intestacy and the appointment of a personal representative. Probate may occur either:

(a) As an abbreviated probate proceeding as provided in subchapter II of this chapter;

(b) As a standard probate proceeding as provided in subchapter III of this chapter;

(c) As a small estates proceeding as provided in subchapter VI of this chapter. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1,

1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Cited in *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987).

§ 20-302. Necessity for probate.

(a) A will is ineffective to transfer property or to nominate a personal representative unless it is admitted to probate or recorded as provided in section 20-341(b).

(b) Except for foreign personal representatives, no person shall exercise the powers or assume the duties of a personal representative unless he has been appointed by the Court. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See **Cited** in *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987).
note to § 20-301.

§ 20-303. Order of priority for appointment of personal representative; persons excluded.

(a)(1) *General.* — The Court shall, except as provided in subsections (b) and (d), appoint personal representatives, successor personal representatives, and special administrators according to the following order of priority, with all persons in any one of the following paragraphs considered as a class:

(A) the personal representative or representatives named in a will admitted to probate;

(B) the surviving spouse or children of an intestate decedent or the surviving spouse of a testate decedent;

(C) the residuary legatees;

(D) the children of a testate decedent;

(E) the grandchildren of the decedent;

(F) the parents of the decedent;

(G) the brothers and sisters of the decedent;

(H) the next of kin of the decedent;

(I) other relations of the decedent;

(J) the largest creditor of the decedent who applies for administration;

(K) any other person.

(2)(A) Relations of whole blood shall be preferred to those of half-blood in equal degree. Relations of half-blood shall be preferred to those of whole blood in a remoter degree.

(B) Relations descending shall be preferred to relations ascending in a collateral line. A nephew or niece shall be preferred to an uncle or aunt.

(C) A person may not be preferred in the ascending line beyond a parent or in the descending line below a grandchild.

(b) *Exclusions.* — Letters shall not be granted to a person who, at the time any determination of priority is made:

(1) has filed with the Register a declaration in writing renouncing the right to administer;

(2) is under the age of 18;

(3) has a mental illness as defined in section 21-501 or is under conservatorship as defined in section 21-1501;

(4) has been convicted and not pardoned on the basis of innocence of a felony in the District of Columbia or of an offense in any other jurisdiction which, if committed in the District of Columbia, would be a felony and the sentence imposed for such conviction has not expired or has expired within the past 10 years;

(5) is an alien who has not been lawfully admitted for permanent residence;

(6) is a judge of any court established under the laws of the United States or is an employee of the Superior Court of the District of Columbia, the District of Columbia Court of Appeals or the District of Columbia Court System, unless such person is the surviving spouse of the decedent or is related to the decedent within the third degree; or

(7) is a nonresident of the District of Columbia, unless such person files an irrevocable power of attorney with the Register designating the Register and the Register's successors in office as the person upon whom all notices and process issued by a competent court in the District of Columbia may be served with the same effect as personal service, in relation to all suits or matters pertaining to the estate in which the letters are to be issued; in such cases the Register shall forward by registered or certified mail to the address of the personal representative, which shall be stated in the power of attorney, all notices and process served upon the Register pursuant to such designation.

(c) *Appointment within class.* — When there are several persons in a class eligible to receive letters, the Court may grant letters to one or more of them, as necessary or convenient for the proper administration of the estate; except that, subject to subsections (b) and (d), all personal representatives named in a will admitted to probate are entitled to letters.

(d) *Exception.* — The Court may, for good cause shown, vary from the order of priority to letters set forth in subsection (a). (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in §§ 20-352, 20-501, and 20-531.

Legislative history of Law 3-72. — See note to § 20-301.

Cited in *Peek v. District of Columbia*, App. D.C., 567 A.2d 50 (1989); *Godette v. Estate of*

Cox, App. D.C., 592 A.2d 1028 (1991); *Hopkins v. Akins*, App. D.C., 637 A.2d 424 (1993); *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 20-304. Petition for probate.

(a) *General.* — The petition for probate shall contain all knowledge or information of the petitioner with respect to:

- (1) the name, domicile, and place and date of death of the decedent;
- (2) the petitioner's name, address, age, citizenship, relationship to the decedent, interest in the estate, if any, and legal disability, if any;
- (3) facts necessary to confer jurisdiction upon the Court;
- (4) any other proceeding filed elsewhere regarding the decedent's estate;
- (5) the character, location, and estimated value of the decedent's real and personal property and the total estimated debts and funeral expenses of the decedent;

(6) the names and addresses of all interested persons, and the names of all persons who are witnesses to any will referred to in subsection (c); and

(7) whether the decedent died intestate or testate with disclosure of further information pursuant to subsection (b) or (c), as appropriate.

(b) *Intestate.* — If the decedent died intestate, the petition shall state that a diligent search for a will has been made.

(c) *Testate.* — If the decedent died testate, the petitioner shall: (1) exhibit the original of the will with the petition, or exhibit a copy of the will if the original has already been filed; and (2) state whether the petitioner knows of any later will. If the petitioner is filing or has filed the original of the will, the petition shall state the manner in which the petitioner obtained the original of the will.

(d) *Explanation for lack of information.* — The petition shall state the reasons why any information required by subsection (a) cannot be furnished by the petitioner.

(e) *Request for abbreviated or standard probate or small estates proceeding.* — The petition shall indicate whether the petitioner requests an abbreviated probate, small estates or standard probate proceeding.

(f) *Request for court action.* — The petition may contain, as appropriate, and shall (without the need for the filing of any complaint) be sufficient to obtain the Court's action on, a request for one or more of the following:

(1) the admission to probate of any will exhibited with the petition;

(2) an order directing witnesses to an alleged will to appear and give testimony regarding its execution;

(3) an order requiring any person alleged to have custody of a will to deliver it to the Court;

(4) an order directing any interested person to show cause why the provisions of any lost or destroyed will should not be admitted to probate as expressed in the petition;

(5) a finding that the decedent died intestate;

(6) a request for the appointment of a supervised personal representative if the requirements of section 20-402 are met and supervision is desired, or for the appointment of an unsupervised personal representative in other cases and, in each case, for the issuance of appropriate letters;

(7) any other relief that the petitioner may deem appropriate. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(j), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-301, 20-311, 20-312, 20-321, and 20-352.

Effect of amendments. — D.C. Law 10-241 inserted "and shall (without the need for the filing of any complaint) be sufficient to obtain the Court's action on" in the introductory language of (f); and rewrote (f)(6).

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was

introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Application of Law 10-241. — Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Cited in *Estate of Presgrave v. Stephens*, App. D.C., 529 A.2d 274 (1987); *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

§ 20-305. Complaint to contest the validity of a will.

Except as provided in section 20-353(b), any person may file a verified complaint to contest the validity of a will within 6 months following notice by publication of the appointment or reappointment of a personal representative under section 20-704. The person filing the complaint shall give notice to all interested persons. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(k), 42 DCR 63.)

Section references. — This section is referred to in § 20-331.

Effect of amendments. — D.C. Law 10-241 deleted the former last sentence.

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — See note to § 20-304.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

Creation of new right. — This section is not a statute of creation in the sense that it

creates a new right. *Easter Seal Soc'y for Disabled Children v. Berry*, App. D.C., 627 A.2d 482 (1993).

Time limitations not jurisdictional. — Where a statute grants a right and simultaneously limits the time period within which to pursue that right, the time period is not, absent an expression to the contrary in the statute, a jurisdictional element of the cause of action. *Easter Seal Soc'y for Disabled Children v. Berry*, App. D.C., 627 A.2d 482 (1993).

Subchapter II. Abbreviated Probate Proceeding.

§ 20-311. Nature of proceeding.

(a) An abbreviated probate proceeding is a proceeding for the probate of a will or a determination of a decedent's intestacy and for the appointment of a personal representative. This proceeding is instituted when an interested person files a petition for an abbreviated probate proceeding with the Court in accordance with the provisions of section 20-304. This proceeding may be conducted without the prior notice required for standard probate under section 20-323.

(b) The finality of abbreviated probate shall be governed by section 20-331. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(l), 42 DCR 63.)

Section references. — This section is referred to in § 20-101.

Effect of amendments. — D.C. Law 10-241 deleted the former last sentence in (a); and added (b).

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — See note to § 20-304.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

Cited in *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987).

§ 20-312. Action on petition.

(a) *General.* — Upon a request for abbreviated probate filed in accordance with section 20-304, the Court shall appoint one or more personal representatives, except as provided in section 20-322. The appointment of a personal representative shall constitute an Order for unsupervised administration, unless the Order specifically provides for supervised administration as pro-

vided in section 20-402. In no event, however, shall the appointment of a personal representative be delayed pending the Court's decision with regard to whether the administration will be supervised or unsupervised.

(b) *Wills.* — In the case of a petition to admit a will to abbreviated probate, due execution of the will shall be presumed and the Court may admit a will to probate either: (1) if the will appears to have been duly executed and contains a recital by attesting witnesses of facts constituting due execution; or (2) upon the verified statement of any person with personal knowledge of the circumstances of execution, whether or not the person was in fact an attesting witness, reciting facts showing due execution of the will. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(m), 42 DCR 63.)

Section references. — This section is referred to in § 20-321.

Effect of amendments. — D.C. Law 10-241 added the second and third sentences in (a).

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — See note to § 20-304.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

Cited in Estate of Presgrave v. Stephens, App. D.C., 529 A.2d 274 (1987).

Subchapter III. Standard Probate Proceeding.

§ 20-321. Nature of proceeding.

A standard probate proceeding is a proceeding for the probate of a will or a determination of the decedent's intestacy, particularly when due execution of a will cannot be presumed under section 20-312, and for the appointment of a personal representative. This proceeding is instituted when an interested person or creditor files a petition for a standard probate proceeding with the Court in accordance with the provisions of section 20-304; and the filing of a complaint shall not be required for these purposes. This proceeding is conducted after notice as provided in section 20-323. If no petition for abbreviated or standard probate is filed within a reasonable time, the Register, with the approval of the Court, may file a petition for standard probate. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(n), 42 DCR 63.)

Section references. — This section is referred to in § 20-101.

Effect of amendments. — D.C. Law 10-241 inserted "particularly when due execution of a will cannot be presumed under section 20-312" in the first sentence; and added "and the filing of a complaint shall not be required for these purposes" at the end of the second sentence.

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — See note to § 20-304.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

Cited in Richardson v. Green, App. D.C., 528 A.2d 429 (1987).

A proceeding for standard probate shall be instituted:

- (a) if, at any time before abbreviated probate,
- (1) an interested person or creditor makes a request; or
 - (2) it appears to the Court that the petition for abbreviated probate is materially incomplete or incorrect in any respect; or
- (b) in accordance with the provisions of section 20-331. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-301.

(a) *When given.* — A person filing a petition for standard probate shall promptly give notice to all known interested persons. In addition, the petitioner shall publish a notice once a week for 2 successive weeks in a newspaper of general circulation in the District of Columbia and in any other publication the Court may provide by Rule.

(b) *Form of notice.* — The notice required by this section shall be in the form prescribed by the Rules. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-301.

In a standard probate proceeding:

- (1) Proof of due execution shall be made by affidavit of the witnesses as provided in paragraph (3) of this section unless the Court orders otherwise.

(2) After proof of due execution, the Court shall enter an order admitting the will to probate or determining that the decedent died intestate. At this time, the Court shall also appoint or reappoint one or more personal representatives, may order that the administration will be supervised as provided in section 20-402, and, if appropriate, revoke, modify, or confirm any action taken at any prior abbreviated probate, small estates or standard probate proceeding.

(3) Affidavits of due execution shall be in substantially the following form:

On this _____ day of _____ 19 _____,
 _____ personally appeared and, under oath an-
 swered the following questions as follows:

1. Were you one of the witnesses who signed the attached written document which is dated _____ and is said to be the last will and testament of _____ of the District of Columbia who is now dead? (Please initial appropriate box.) _____ Yes _____ No

2. Did _____ sign the attached document while
(the testator)
in your presence? _____ Yes _____ No

3. Did _____ say the attached document was to be a
(the testator)
part of his will? _____ Yes _____ No
4. At the time he signed the attached document, did _____
(the testator)
seem to you to be of sound mind and aware of what he was doing? _____ Yes
_____ No
5. Did _____ ask you to sign the attached document
(the testator)
as a witness? _____ Yes _____ No
6. When you signed the attached document as a witness, were _____
(the testator)
and all of the other witnesses who signed the document present? _____ Yes
_____ No
7. Were you present when each of the other witnesses signed the attached
document? _____ Yes _____ No
8. Did _____ ask the other people who signed the
(the testator)
attached document to do so as witnesses? _____ Yes _____ No
9. Was _____ present when each of the witnesses signed
(the testator)
the attached document? _____ Yes _____ No
10. What is your date of birth? _____
11. Do you know of any will or codicil of _____ other than the
(the testator)
attached document? _____ Yes _____ No
(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law
10-241, § 3(o), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(b), 44 DCR
1271.)

Effect of amendments. — D.C. Law 10-241 added "In a standard probate proceeding" at the beginning of the section; redesignated former (a)-(c) as (1)-(3), respectively; substituted "paragraph (3)" for "subsection (c)" in (1); and inserted "may order that the administration will be supervised as provided in section 20-402" in (2).

D.C. Law 11-255 inserted "of this section" in (1).

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — See note to § 20-304.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective April 9, 1997.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

*Subchapter IV. Finality.***§ 20-331. Finality of abbreviated and standard probate proceedings.**

(a) An abbreviated probate proceeding shall be set aside if, within 6 months after notice of the appointment of the personal representative pursuant to section 20-704, an interested person makes a request for a standard probate proceeding.

(b) A standard probate proceeding may be reopened if, within 6 months after the notice of appointment of the personal representative pursuant to section 20-704: (1) an interested person makes a request; and (2) the Court finds that:

(A) the notice provided in section 20-704 was not given to such interested person and such interested person did not have actual notice of the petition for probate;

(B) there was a material mistake or substantial irregularity in the prior probate proceeding; or

(C) the proponent of a later offered will, in spite of the exercise of reasonable diligence, was actually unaware of such will's existence at the time of the prior probate proceeding.

(c) Except as provided in section 20-305 and this section, an abbreviated probate proceeding shall be final and binding as to all interested persons. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(p), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-311 and 20-322.

Effect of amendments. — D.C. Law 10-241 rewrote this section.

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — See note to § 20-304.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

*Subchapter V. Foreign Personal Representatives.***§ 20-341. Requirements.**

(a) A foreign personal representative of a nondomiciliary shall not be required to obtain letters in the District of Columbia for any purpose.

(b) A foreign personal representative administering an estate which has property located in the District of Columbia shall file with the Register a copy of the appointment as personal representative and a copy of the decedent's will, if any, authenticated pursuant to 28 U.S.C. sec. 1738. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-302.

Legislative history of Law 3-72. — See note to § 20-301.

§ 20-342. Powers of foreign personal representative.

A foreign personal representative may exercise all the powers of such office and may sue and be sued in the District of Columbia, subject to any statute or rule relating to nonresidents. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-301.

§ 20-343. Publication and claims of creditors.

(a) *Publication.* — A foreign personal representative of a decedent who owned any property located in the District of Columbia shall publish once a week for 3 successive weeks a notice in a newspaper of general circulation in the District of Columbia and any other publication as the Court may provide by Rule. This notice shall include an announcement of such representative's appointment, name and address, agent's name and address in the District of Columbia for service of process on file with the Register, the name of the court that made such appointment, a brief description of all real property owned by the decedent in the District of Columbia and, if appropriate, a statement that the decedent owned personal property in the District. If the property located in the District of Columbia is real property (not leasehold), the notice shall also state that claims against the estate may be filed with the Register at any time within 6 months from the date of first publication. The foreign personal representative shall record in the Register's office a certification that such notice was published.

(b) *Personal or leasehold property.* — With regard to personal or leasehold property located in the District of Columbia, a foreign personal representative may remove, lease, or transfer the property:

(1) upon the first publication of notice pursuant to subsection (a) if such representative holds letters from:

(A) a jurisdiction within the Metropolitan Area; or

(B) a jurisdiction outside the Metropolitan Area and such representative posts a bond with a penalty amount equal to the value of the property to extend for the 6 months during which a creditor may file a claim; or

(2) six months after the first publication of notice pursuant to subsection (a) if:

(A) no claims are filed with the Register during this time; or

(B) all claims of creditors have been released or finally determined in favor of the personal representative.

(c) *Real property.* — With regard to real property located in the District of Columbia, a foreign personal representative may lease or transfer the property if such representative:

(1) posts bond with a penalty amount equal to the value of the property and makes first publication of notice pursuant to subsection (a); or

(2) allows 6 months to pass after the first publication required by subsection (a) and (A) no claims are filed with the Register during this time or

(B) all claims of creditors have been released or finally determined in favor of the personal representative.

(d) *Statement of claim.* — Any creditor may, within 6 months from the date of the first publication of notice, file a written statement of claim, pursuant to section 20-905, with the Register and deliver or mail a copy of the statement to the personal representative. The Register shall maintain a book known as the "Claims Against Nonresident Decedents" in which all such claims and releases thereof shall be recorded. Unless a release of a validly recorded claim has been recorded or the claim has finally been determined in favor of the personal representative, such claim shall constitute a lien against all real property owned by the decedent in the District of Columbia at death for a period of 12 years from date of death: Except, that if the personal representative is empowered to sell the property such claim shall constitute a lien against the net proceeds from the sale.

(e) *No other action necessary.* — It shall not be necessary for the foreign personal representative to institute any other proceedings before the Register with respect to any assets subject to the jurisdiction of the District of Columbia.

(f) *Responsibility for payment of death taxes.* — This section shall not be construed to relieve the foreign personal representative of the responsibility for paying all death taxes due the District of Columbia. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-106.

Cited in In re Estate of Burton, App. D.C., 541 A.2d 599 (1988).

Legislative history of Law 3-72. — See note to § 20-301.

§ 20-344. Right of heir or legatee.

In the event a foreign personal representative fails to transfer the title to real or leasehold property located in the District of Columbia to the person or persons legally entitled to such property, within a reasonable time, the Court may direct the transfer of title to such person or persons if: (a) the will, if any, or a copy authenticated pursuant to 28 U.S.C. sec. 1738, is filed in the Register's office; (b) notice, approved by the Court, has been published indicating that the decedent died owning the real or leasehold property; and (c) all claims of creditors, if any, have been satisfied. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-301.

Subchapter VI. Small Estates.

§ 20-351. General.

If the property of a decedent subject to administration in the District of Columbia has a value of \$15,000 or less, the property may be administered as a small estate in accordance with the provisions of this subchapter. (June 24,

1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(q), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 substituted "\$15,000" for "\$10,000."

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — See note to § 20-304.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

Beginning administration of estate. — Each of the statutory methods for beginning

the administration of an estate, whether testate or intestate, requires someone to petition the court for the appointment of a personal representative. *Richardson v. Green*, 113 WLR 1973 (Super. Ct. 1985).

Cited in *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987); *Duggan v. Keto*, App. D.C., 554 A.2d 1126 (1989).

§ 20-352. Petition.

Any person eligible for appointment as the personal representative of an estate pursuant to section 20-303 may file a verified petition for administration of a small estate. Such petition shall contain, in addition to the information required by section 20-304:

(a) A statement that the petitioner has made a diligent search to discover all property and debts of the decedent;

(b) A list of the known creditors of the decedent, with the amount of each claim, including contingent and disputed claim; and

(c) A statement of any legal proceedings pending in which the decedent was a party. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-301.

Beginning administration of estate. — Each of the statutory methods for beginning the administration of an estate, whether testate or intestate, requires someone to petition

the court for the appointment of a personal representative. *Richardson v. Green*, 113 WLR 1973 (Super. Ct. 1985).

Cited in *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987).

§ 20-353. Proceedings after petition.

(a) *Determinations on petition.* — If the Court finds that the petition and any additional information filed under this subchapter is accurate, it shall:

(1) appoint a personal representative of the small estate;

(2) direct the immediate payment of the allowable funeral expenses as provided in section 20-906 and the family allowance as provided in section 19-101;

(3) direct the sale of property as may be necessary to satisfy funeral expenses and the family allowance; and

(4) if it appears that there will be any property remaining after payment of funeral expenses and there is no family allowance payable, admit the will, if any, to probate and direct that notice be given in accordance with subsection (b).

(b) *Notice.* — If the Court directs that notice be given, notice shall be given once in the form required by section 20-704; except, that the period within which claims must be filed or objection must be made to contest the validity of the will or the small estates proceeding or the appointment of the personal

representative shall be 30 days from the date of publication of notice. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in §§ 20-305, 20-354, and 20-355.

Legislative history of Law 3-72. — See note to § 20-301.

§ 20-354. Duties of personal representatives.

(a) *Attorney; bond; compensation.* — No person appointed as a personal representative in accordance with section 20-353 shall be required to be represented by an attorney or to give bond or be entitled to receive any commission for the performance of duties as personal representative.

(b) *Distribution.* — If notice is required and 30 days have expired since the publication of notice as provided in section 20-353(b), the personal representative shall file proof of publication of the notice and a verified list of all claims, including contingent and disputed claims, and the amount of the claims filed since the original petition. The Court shall hear any objections filed pursuant to the notice and, if satisfied that all action taken pursuant to this subchapter is proper, shall direct the personal representative to pay all proper claims and expenses and to distribute the net estate either in accordance with the will or, if the decedent died intestate, to the decedent's heirs. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-301.

§ 20-355. After-discovered property.

The personal representative shall report to the Court immediately, by verified supplemental petition, any property of the decedent discovered after the filing of the petition. If the after-discovered property increases the value of all property of the decedent to an amount greater than the allowable funeral expenses (and there is no family allowance payable) but less than \$15,000, the Court shall admit the will, if any, to probate and direct that notice be given in accordance with section 20-353(b). If the after-discovered property increases the value of all property of the decedent to more than \$15,000, there shall be no further proceedings under this subchapter, and administration shall proceed under the other provisions of this title. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(r), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 substituted "\$15,000" for "\$10,000" in the second and third sentences.

Legislative history of Law 3-72. — See note to § 20-301.

Legislative history of Law 10-241. — See note to § 20-304.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

§ 20-356. Applicability of other provisions of title.

Except to the extent inconsistent with this subchapter, all the other provisions of this title shall apply to small estates. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-301.

§ 20-357. Exception for motor vehicles.

If the only property of a decedent is not more than 2 motor vehicles, the Mayor may transfer title to the motor vehicles in accordance with section 40-102(d). If title is transferred under this section, administration of the estate of the decedent is not necessary. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-105.

Legislative history of Law 3-72. — See note to § 20-301.

The District of Columbia Probate Reform Act of 1980 (§§ 20-101 et seq. and, in particular, § 20-105 and § 19-301) cannot be interpreted so as to allow for the non-judicial disposition of an estate that comprises more property than contemplated by the express exception in this section. *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987).

Exception to requirement of appointment of personal representative. — The only exception to the requirement of the appointment of a personal representative in § 20-105 is this section, which provides that if the property of the decedent is not more than 2 cars, the mayor may transfer title to same and administration of the estate may be dispensed with. *Richardson v. Green*, 113 WLR 1973 (Super. Ct. 1985).

Cited in *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

CHAPTER 4. SUPERVISED AND UNSUPERVISED ADMINISTRATION.

Sec.

20-401. Supervised administration; in general.

20-402. Supervised administration; procedure.

20-403. Supervised administration; changes and effect.

20-404. Supervised administration; powers of

Sec.

personal representative.

20-405. Supervised administration; interim orders; distribution and closing orders.

20-406. Unsupervised personal representative.

§ 20-401. Supervised administration; in general.

(a) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the Court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the Court, as well as to the interested parties, and is subject to directions concerning the estate made by the Court on its own motion or on the motion of any interested party. Except as otherwise provided in this chapter, or as otherwise ordered by the Court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

(b) Unsupervised administration differs from supervised administration only in the following ways: in an unsupervised administration, the personal representative is not required to file any inventories or accounts with the Court, is not subject to provisions of this title which expressly apply only to a personal representative in a supervised administration, and, in general, is subject only to any order of the Court rendered upon a failure to satisfy filing requirements imposed by this title or a finding of good cause after a narrow issue or question has been brought to the Court's attention by either the personal representative or an interested person, but otherwise is not subject to continuing Court supervision. (Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-704 and 20-711.

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first

and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Application of Law 10-241. — Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

§ 20-402. Supervised administration; procedure.

(a) A prayer for supervised administration may be made in the petition for probate. The Court shall order supervised administration of a decedent's estate only:

- (1) If the decedent's will directs supervised administration;

(2) If the decedent's will directs unsupervised administration, but for good cause shown the Court finds that supervised administration is necessary for the protection of persons interested in the estate; or

(3) In other cases where, for good cause shown, the Court finds that supervised administration is necessary under the circumstances which the Court shall specify.

(b) In no event shall the appointment of a personal representative be delayed pending the Court's decision pursuant to subsection (a) of this section. Thus, whenever the Court must make a decision under subsection (a)(2) or (a)(3) of this section, the Court shall appoint the personal representative in unsupervised administration; thereafter, an Order for supervised administration shall convert the proceeding to supervised administration. (Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-304, 20-312, 20-324, and 20-403.

Legislative history of Law 10-241. — See note to § 20-401.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-401.

§ 20-403. Supervised administration; changes and effect.

(a) The filing of signed waivers by all interested persons in accordance with section 20-731 shall be treated for all purposes as a change to unsupervised administration, but the filing of a subsequent demand for the filing of inventories and accounts by any such interested person shall be treated as a change back to supervised administration.

(b) A petition for supervised administration may be filed by any interested person or by a personal representative at any time before the termination of a probate proceeding; similarly, the Court may initiate such a proceeding upon good cause shown. In either event, after notice to interested persons and a hearing (unless the hearing is waived by both the petitioner and the personal representative, or by the interested persons if petitioner is the personal representative), the Court may order supervised administration, applying the same standards as under section 20-402. In no event, however, shall any Court Order be deemed to convert the proceeding to a supervised administration unless the Order expressly so provides. The filing of such petition does not affect any powers and duties of the personal representative unless they are expressly restricted by the Court pending the hearing or final Order.

(c) In the event of a change from one form of administration to another pursuant to this title, such change shall be prospective only. Except in the case of fraud, no action of the personal representative shall be set aside by the Court solely by reason of a change from one form of administration to another. (Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63; Apr. 18, 1996, D.C. Law 11-110, § 25(b), 43 DCR 530.)

Effect of amendments. — D.C. Law 11-110 deleted the subsection heading "Change during administration to unsupervised administra-

tion" at the beginning of (a) and the subsection heading "Prospective change" at the beginning of (c).

Legislative history of Law 10-241. — See note to § 20-401.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5,

1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-401.

§ 20-404. Supervised administration; powers of personal representative.

Unless restricted by the Court for good cause shown, a supervised personal representative has, without any interim order approving exercise of a power, all powers of personal representatives under this title. Any restriction on the power of a personal representative ordered by the Court must be endorsed on the letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative. (Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Legislative history of Law 10-241. — See note to § 20-401.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-401.

§ 20-405. Supervised administration; interim orders; distribution and closing orders.

Unless otherwise ordered by the Court, supervised administration is terminated by order in accordance with the provisions of section 20-1301. Interim orders granting other relief may be issued by the Court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person. (Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Legislative history of Law 10-241. — See note to § 20-401.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-401.

§ 20-406. Unsupervised personal representative.

A personal representative appointed without court supervision having been ordered, and any other personal representative except during any period for which court supervision has been ordered, is not subject to continuing court supervision except as provided in section 20-107 or otherwise in this title, and is not subject to sections of this title applicable only to supervised personal representatives or estates. (Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Legislative history of Law 10-241. — See note to § 20-401.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-401.

CHAPTER 5. THE PERSONAL REPRESENTATIVE AND SPECIAL ADMINISTRATOR; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY.

Subchapter I. Appointment and Issuance of Letters; Bond; Accrual of Duties and Powers.

Sec.

- 20-501. Conditions of appointment.
- 20-502. Bond; form.
- 20-503. Issuance and content of letters.
- 20-504. Form of letters.
- 20-505. Time of accrual of duties and powers.

Subchapter II. Several Personal Representatives.

- 20-511. Powers and duties of successor personal representative.
- 20-512. Copersonal representatives; when joint action required; liability.
- 20-513. Powers of surviving copersonal representative.

Subchapter III. Suspension and Termination of Powers.

Sec.

- 20-521. Restraining acts of personal representatives.
- 20-522. Termination; general.
- 20-523. Termination; effect.
- 20-524. Termination; death or disability.
- 20-525. Termination; resignation.
- 20-526. Termination; removal.
- 20-527. Termination; change in proceeding.

Subchapter IV. Special Administrator.

- 20-531. Appointment; qualifications.
- 20-532. Bond.
- 20-533. Powers and duties.
- 20-534. Termination of appointment.

Subchapter I. Appointment and Issuance of Letters; Bond; Accrual of Duties and Powers.

§ 20-501. Conditions of appointment.

As a condition to appointment, a personal representative, whether in a supervised or unsupervised administration, shall file (a) a statement of acceptance of the duties of the office, (b) any required bond, and (c) a written consent to personal jurisdiction in any action brought in the District of Columbia against such personal representative, where service of process is effected pursuant to the rules of the Court at such representative's address shown in the proceedings or, in the case of a nonresident personal representative, pursuant to the provisions of section 20-303(b)(7). (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(u), 42 DCR 63.)

Section references. — This section is referred to in § 20-523.

Effect of amendments. — D.C. Law 10-241 inserted "whether in a supervised or unsupervised administration."

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1,

1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Application of Law 10-241. — Section 4 of

D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Cited in *Jackson v. Young*, App. D.C., 546 A.2d 1009 (1988); *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

§ 20-502. Bond; form.

(a) *When required.* — Unless excused from giving bond by the decedent's will or written waiver of all interested persons, each personal representative shall execute a bond to the District of Columbia for the benefit of interested persons and creditors with a surety or sureties approved by the Court. Whenever a personal representative is excused from giving a bond by the decedent's will, or by the written waiver of 1 or more interested persons, no bond shall be given (except as provided below). In the absence of a waiver by the testator, the interest of any interested person who does not waive bond shall be protected but no waiver of bond shall be permitted on behalf of a person who is not a competent adult except as provided in section 20-101(d)(2)(C).

(a-1) *Demand for bond.* — Any person having an interest in the estate worth in excess of \$1,000, or any creditor having a claim in excess of \$1,000, may make a written demand that a personal representative give bond in an amount not exceeding the value of the person's or creditor's interest in the estate. The demand must be filed with the Register and a copy mailed to the personal representative, if appointment and qualification have occurred. Upon a request for bond, the Court may set a hearing to determine if bond is required.

(b)(1) *When not required.* — Notwithstanding the provisions of subsection (a), no bond shall be required of banks and trust companies authorized under District of Columbia laws to act as personal representatives and national banks, except as otherwise provided by law or Court Rule.

(2) No bond shall be required for any period following the distribution of all known assets and satisfaction of all known claims.

(c) *Surety.* — The surety on any bond required by subsection (a) may be any corporation authorized to act as a surety in the District of Columbia. All sureties and the personal representative shall be jointly and severally liable on the bond, unless otherwise ordered by the Court.

(d)(1) *Penalty.* — The penalty sum of any bond required by subsection (a) shall be fixed by the Court in an amount not exceeding the probable maximum value of the personal and D.C. real property of the estate at any time during administration.

(2) Repealed.

(3) The Court may permit the penalty sum of the bond to be reduced by the amount of cash belonging to the estate that is deposited with a bank, trust company, savings and loan association, building association, building and loan association, or federal savings and loan association approved by the Court in an account expressly made subject to withdrawal only in a manner that is approved by the Court.

(3A) The Court may permit the penalty sum of the bond to be reduced by the value of any real or personal property which, at the request of the personal

representative or pursuant to Court Order upon good cause shown, cannot be sold or distributed without prior Court authorization.

(4) The penalty sum may be increased or decreased by the Court at its discretion for good cause at any time during administration.

(e) *Filing; certified copy.* — Every bond executed by a personal representative shall be filed in the office of the Register. Any person may obtain from the Register a certified copy of such bond.

(f) *Premium payable out of estate.* — Bond premiums shall be chargeable against the property of the estate.

(g) *Form of bond.* — A bond shall be in the form prescribed by the Rules. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(v), 42 DCR 63.)

Section references. — This section is referred to in § 20-532.

Effect of amendments. — D.C. Law 10-241, in (a), rewrote the second sentence and added the exception at the end of the third sentence; inserted (a-1); substituted "personal and D.C. real property" for "personal property" in (d)(1); repealed (d)(2); and inserted (d)(3A).

Legislative history of Law 3-72. — See note to § 20-501.

Legislative history of Law 10-241. — See note to § 20-501.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-501.

Fiduciary duty. — Attorney for the personal representative of the estate of a party who died intestate owed no duty of reasonable care to decedent's surviving spouse arising from her relationship with the personal representative because only the personal representative had authorization over decedent's bank account and since attorney had acted only in her capacity as attorney for the personal representative. *Hopkins v. Akins*, App. D.C., 637 A.2d 424 (1993).

§ 20-503. Issuance and content of letters.

After appointment, letters shall be issued to the personal representative by the Register. Letters shall contain:

- (a) the name and address of the Court;
- (b) the name of the decedent and the personal representative;
- (c) the date of appointment of the personal representative;
- (d) the date the will, if any, was admitted to probate;
- (e) the signature of the Register and the seal of the Court;
- (f) the date the letters were issued; and

(g) whether the administration is supervised or unsupervised and, if supervised, any limitations on the powers of the personal representative. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(w), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 added (g).

Legislative history of Law 3-72. — See note to § 20-501.

Legislative history of Law 10-241. — See note to § 20-501.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

§ 20-504. Form of letters.

Letters of administration shall be in substantially the following form:

LETTERS OF ADMINISTRATION

To all persons who may be interested in the estate of _____, deceased:

Administration of the estate of the deceased has been granted on _____ to _____ (and the will of the deceased was probated on _____). This administration (is) (is not) (strike the inapplicable language) subject to continuing supervision of the Court. The powers of the personal representative (are not limited) (are limited as follows: _____). The appointment is in full force and effect as of this date.

(SEAL)

Witness:

Dated:

Register of Wills.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(x), 42 DCR 63.)

Section references. — This section is referred to in § 20-744.

Effect of amendments. — D.C. Law 10-241 rewrote the form.

Legislative history of Law 3-72. — See note to § 20-501.

Legislative history of Law 10-241. — See note to § 20-501.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

§ 20-505. Time of accrual of duties and powers.

The duties and powers of a personal representative commence upon the issuance of the letters. Good faith acts beneficial to the estate which in fact were committed by the personal representative prior to issuance of letters shall have the same effect as acts occurring after the issuance of letters. A personal representative may ratify acts done on behalf of the estate by others if the personal representative is authorized to perform such acts. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(y), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 rewrote the second sentence.

Legislative history of Law 3-72. — See note to § 20-501.

Legislative history of Law 10-241. — See note to § 20-501.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

Cited in Richardson v. Green, App. D.C., 528 A.2d 429 (1987).

Subchapter II. Several Personal Representatives.

§ 20-511. Powers and duties of successor personal representative.

A successor personal representative shall have the same powers and duties as the original personal representative including the powers granted in the will but excluding any power that the will expressly made personal to the personal representative named in the will. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-512. Copersonal representatives; when joint action required; liability.

(a) When two or more persons are appointed copersonal representatives, the concurrence of all is required on all acts connected with the administration and distribution of the estate; except, for: (1) giving receipts for or receiving property due the estate; (2) in emergency situations, when all personal representatives cannot reasonably be consulted in the time available; (3) when a personal representative has validly delegated power to act to a copersonal representative; and (4) when the will or a statute provides otherwise.

(b) Persons dealing with a copersonal representative without knowledge that such representative is not the sole personal representative shall be as fully protected as if the person with whom they dealt had been the sole personal representative.

(c) If a personal representative delegates power to act to a copersonal representative, such delegation shall not reduce such representative's fiduciary responsibility. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-513. Powers of surviving copersonal representative.

Unless the will otherwise provides: (a) when the appointment of a copersonal representative is terminated, the remaining copersonal representative or representatives may exercise all powers previously exercised by the copersonal representatives; and (b) when one of two or more persons nominated by the will as copersonal representatives is not appointed by the Court, those appointed may exercise all the powers of the office. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-501.

*Subchapter III. Suspension and Termination of Powers.***§ 20-521. Restraining acts of personal representatives.**

(a) On the petition of any interested person, the Court by temporary order and for good cause shown may restrain a supervised personal representative from performing specified acts of administration, disbursement, or distribution, or exercising any powers or discharging any duties of such office, or make any other order to secure proper performance of the supervised personal representative's duty, if it appears to the Court that the supervised personal representative otherwise may take some action which would unreasonably jeopardize the interest of the petitioner. Persons with whom the supervised personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the Court directs shall be given to the supervised personal representative and his attorney of record, if any, and to any other parties named defendant in the petition. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(aa), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 rewrote this section.

Legislative history of Law 3-72. — See note to § 20-501.

Legislative history of Law 10-241. — See note to § 20-501.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

§ 20-522. Termination; general.

The appointment of a personal representative shall be terminated in accordance with chapter 13 of this title (Closing the Estate) or by the personal representative's death, disability, resignation, or removal as provided in sections 20-524 through 20-527. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-523. Termination; effect.

(a) *Powers and duties.* — Termination ends the rights and powers of the personal representative as conferred by will or by this title. Except as provided in section 20-524, a personal representative whose appointment has been terminated shall: (1) unless otherwise ordered by the Court, perform acts necessary to protect property belonging to the estate; and (2) deliver such property to the special administrator or the successor personal representative, if any.

(b) *Liability.* — Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or reduce the personal representative's duty to protect property subject to such representative's control, to account for such property and to deliver such property to the special administrator or successor representative. Termination

does not affect the personal jurisdiction consented to pursuant to section 20-501 in proceedings which may be commenced against such representative arising out of the performance of duties as personal representative. If the personal representative fails to account for and deliver the property belonging to the estate to the successor personal representative or special administrator, as required by subsection (a), the Court may enter judgment against the personal representative and the personal representative's surety.

(c) *Acts prior to termination.* — All lawful acts of a personal representative prior to the termination of appointment shall remain valid and effective. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-524. Termination; death or disability.

The appointment of a personal representative shall be terminated by his death or by a judicial determination of his disability. Upon the death or a judicial determination of disability of a personal representative, any interested person (including a person indicated in the decedent's will as the successor personal representative to the deceased or disabled personal representative) may apply to the court for the appointment of a special administrator or successor personal representative. Unless there is a surviving copersonal representative, the personal representative of a deceased personal representative or the person appointed to protect the estate of a personal representative under legal disability shall: (a) have the duty to protect property belonging to the estate that was being administered by the deceased or disabled personal representative; (b) have the power to perform acts necessary for the protection of property of such estate; (c) immediately apply to the Court for the appointment of a special administrator or successor personal representative to carry on the administration of the estate which was being administered by the deceased or disabled personal representative; and (d) immediately account for and deliver the property of such estate to a successor personal representative or special administrator. If the personal representative of a deceased personal representative or the person appointed to protect the estate of a personal representative under legal disability fails to account to and deliver the property belonging to the estate as required by this section, the Court may enter judgment against the estate of the deceased or the disabled personal representative and the deceased or disabled personal representative's surety. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in §§ 20-522 and 20-523.

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-525. Termination; resignation.

A personal representative may resign by filing a written statement of resignation with the Register after giving at least 15 days written notice to all interested persons of intention to resign. If, within such 15 days, no one applies

for the appointment of a successor personal representative or special administrator and no appointment is made, the resigning personal representative may apply to the Court for the appointment of a successor. Upon the appointment of such successor, the resigning personal representative shall immediately account for and deliver the property belonging to the estate to the successor personal representative or special administrator. The resignation of a personal representative shall be effective upon approval by the Court. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-522.

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-526. Termination; removal.

(a) *Cause for removal.* — A personal representative shall be removed from office upon a finding by the Court that such representative: (1) misrepresented material facts in the proceedings leading to the appointment; (2) willfully disregarded an order of the Court; (3) is unable, for any reason, to discharge the duties and powers effectively; (4) has mismanaged property; or (5) has failed, without reasonable excuse, to perform any material duty of such office; provided, that the Court may continue the personal representative in office following a finding in accordance with paragraph (5) if the Court finds that such continuance would be in the best interests of the estate and would not adversely affect the rights of interested persons or creditors.

(b) *Hearing.* — The Court shall conduct a hearing prior to the removal of a personal representative. Such hearing may be held on the Court's own motion, on motion of the Register, or on the written petition of any interested person. The Register shall give notice of such hearing to all interested persons and the Court shall conduct the hearing within a reasonable time thereafter. Upon receipt of such notice, the personal representative may exercise only the powers of a special administrator, as provided in by section 20-533.

(c) *Appointment of successor.* — At the time of removal of a personal representative, the Court shall appoint a successor personal representative or a special administrator.

(d) *Duty of removed personal representative.* — A personal representative who has been removed from office shall immediately account for and deliver the property belonging to the estate to the successor personal representative or special administrator. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-522.

Cited in Richardson v. Green, App. D.C., 528 A.2d 429 (1987); Rearden v. Riggs Nat'l Bank, App. D.C., 677 A.2d 1032 (1996).

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-527. Termination; change in proceeding.

Upon a timely request for standard probate, a personal representative previously appointed shall have only the powers and duties of a special administrator until the appointment of a personal representative in the standard probate proceeding, subject to any order in the standard probate

proceeding. Nothing in this section shall be construed to prohibit the reappointment of a person who was previously appointed in an abbreviated probate proceeding or a small estates proceeding. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in §§ 20-522 and 20-725.

Legislative history of Law 3-72. — See note to § 20-501.

Subchapter IV. Special Administrator.

§ 20-531. Appointment; qualifications.

(a) *Appointment.* — Upon the filing of a petition by an interested party, a creditor, or the Register, or upon the motion of the Court, the Court may appoint a special administrator: (1) when the appointment is necessary to protect property prior to the appointment and qualification of a personal representative; or (2) upon the termination of appointment of a personal representative and prior to the appointment of a successor personal representative.

(b) *Qualifications.* — The Court may appoint any suitable person as a special administrator. In making such appointment, the Court shall give special consideration to any person who is likely to be appointed as the personal representative in accordance with section 20-303 and who is immediately available for appointment. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-101.

Cited in *Cheatle v. Cheatle*, App. D.C., 662 A.2d 1362 (1995).

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-532. Bond.

A special administrator shall satisfy the requirements of section 20-502 relating to the bond of a personal representative. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-533. Powers and duties.

A special administrator shall have the duty and all powers necessary to collect, manage, and preserve the property, in addition to any other duties and powers authorized by the Court. Upon the appointment of a personal representative, the special administrator shall account for the property of the decedent. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-526.

Legislative history of Law 3-72. — See note to § 20-501.

§ 20-534. Termination of appointment.

The appointment of a special administrator terminates either upon the appointment of a personal representative or in the same manner provided in subchapter III of this chapter for the suspension and termination of a personal representative. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-501.

CHAPTER 7. ADMINISTRATION OF THE ESTATE.

Subchapter I. Duties of Personal Representative; Notice of Appointment to Heirs, Legatees, and Creditors.

Sec.

- 20-701. Status and duties of personal representative.
- 20-701.1. Personal representative to proceed without court order; exception.
- 20-702. Duties of personal representative; possession and control of estate.
- 20-703. Preferences; sale of estate property.
- 20-704. Notice of appointment to interested persons, creditors and unknown heirs.
- 20-705. Filing revised and corrected documents.

Subchapter II. Inventory and Appraisal.

- 20-711. Inventory; general.
- 20-712. Appraisal; supervised administration.
- 20-713. Supervised administration; supplemental inventory; reappraisal.
- 20-713.1. Unsupervised administration; inventory and appraisal duties of unsupervised personal representative.
- 20-714. Revision of inventory.
- 20-715. Inventory of successor personal representative.

Subchapter III. Accounting.

- 20-721. Duty to account; supervised administration.
- 20-722. Initial account; supervised administration.
- 20-723. Subsequent account; supervised administration.
- 20-724. When to render accounts; supervised administration.

Sec.

- 20-725. Failure to render account.
- 20-726. Exceptions to account; supervised administration.

Subchapter IV. Waiver of Inventories and Accounts.

- 20-731. Waiver of filing; supervised administration.
- 20-732. Waiver of formal Court audit; supervised administration.
- 20-733. Right of heir or legatee.
- 20-734. Duty to account; unsupervised administration.
- 20-735. Optional proceedings, terminating unsupervised administration; testate or intestate; Certificate of Completion.
- 20-736. Finality.

Subchapter V. Powers of Personal Representative.

- 20-741. General powers.
- 20-742. Court order.
- 20-743. Improper exercise of power; breach of fiduciary duty.
- 20-743.1. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.
- 20-744. Protection of person dealing with personal representative.

Subchapter VI. Claims by Personal Representatives and Attorneys.

- 20-751. Compensation.
- 20-752. Expenses of estate litigation.
- 20-753. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

Subchapter I. Duties of Personal Representative; Notice of Appointment to Heirs, Legatees, and Creditors.

§ 20-701. Status and duties of personal representative.

(a) A personal representative, whether supervised or unsupervised, is a fiduciary who, in addition to the specific duties expressed in this title, is under a general duty to settle and distribute the estate of the decedent in accordance with the terms of the will or laws relating to intestacy and this title, as expeditiously and efficiently as is prudent and consistent with the best interests of the persons interested in the estate. Such representative shall use the authority conferred by this title, by the terms of the will, if any, by any order in proceedings to which such representative is a party, and by the equitable principles generally applicable to fiduciaries, fairly considering the

interests of all interested persons and creditors whose claims have been allowed.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and to special duties applicable in cases of supervised administration, a will probated in abbreviated or standard probate proceedings is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in abbreviated or standard probate proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending probate proceeding, a proceeding to vacate an order entered in an earlier probate proceeding, a proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants of an allowed claim, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this title.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in the District of Columbia at his death has the same standing to sue and be sued in the courts of this and any other jurisdiction as the decedent had immediately prior to death. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(cc), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 rewrote the section and the subchapter heading preceding it.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Fiduciary duty. — Legatees whose potential property interests flowed from a will could

not proceed directly against the trustee of a pourover inter vivos trust as if the legatees were beneficiaries under the trust; instead, the legatees had to proceed in the first instance against the entities with whom the legatees had a fiduciary relationship — the personal representatives of the probate estate — in order to compel the representatives to proceed against the trustee on behalf of the estate. *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

Final account. — There is no specified time for filing the final account; thus the Code clearly contemplates routine administrations in which the assets of an estate will not be distributed for a year or more. *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

Cited in *In re Estate of Burton*, App. D.C., 541 A.2d 599 (1988); *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

§ 20-701.1. Personal representative to proceed without court order; exception.

(a) A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as may be otherwise specified or ordered by the Court in a particular proceeding, do so without adjudication, order, or direction of the Court, but the personal representative

may invoke the jurisdiction of the Court, in proceedings authorized by this title, to resolve questions concerning the estate or its administration.

(b) Unless the time of distribution is extended by the Court for good cause shown, the supervised personal representative shall distribute all the assets of the estate in such representative's possession or control within 30 days of the approval of the final account. (Mar. 21, 1995, D.C. Law 10-241, § 3(dd), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(c), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 deleted the subsection heading in (b).

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Application of Law 10-241. — Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

§ 20-702. Duties of personal representative; possession and control of estate.

A personal representative has a right to and shall take possession or control of the decedent's estate: except, that property in the possession of the person presumptively entitled to such property as heir or legatee shall be possessed by the personal representative only when such possession is reasonably necessary for purposes of administration. When there is a request by a personal representative for delivery of any property possessed by the heir or legatee, it shall be presumed, in any action against the heir or legatee for possession of such property, that the possession of the property by the personal representative is reasonably necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of any property of the estate or to determine the title to any property of the decedent's estate. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ee), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 deleted "A" at the beginning of the first sentence and inserted the present third sentence.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Fiduciary duty. — Attorney for the personal representative of the estate of a party who died intestate owed no duty of reasonable care to decedent's surviving spouse arising from her relationship with the personal representative because only the personal represen-

tative had authorization over decedent's bank account and since attorney had acted only in her capacity as attorney for the personal representative. *Hopkins v. Akins*, App. D.C., 637 A.2d 424 (1993).

Duty to maintain actions. — Legatees whose potential property interests flowed from a will could not proceed directly against the trustee of a pourover inter vivos trust as if the legatees were beneficiaries under the trust; instead, the legatees had to proceed in the first instance against the entities with whom the legatees had a fiduciary relationship — the personal representatives of the probate estate

— in order to compel the representatives to proceed against the trustee on behalf of the estate. *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

The personal representative has a duty to take possession and control of the decedent's estate and to maintain any action reasonably necessary — including, presumably, an action against a trustee of a pourover trust — to recover possession of estate property. *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

Cited in *Estate of Presgrave v. Stephens*, App. D.C., 529 A.2d 274 (1987).

§ 20-703. Preferences; sale of estate property.

Any interested person may move the Court to have a priority placed on the sale or transfer of any property of the estate, both real and personal, prior to the sale or transfer of that property. Upon the filing of such a motion, no sale or transfer of such estate property shall be undertaken by the personal representative until (1) all interested persons have been given notice by the personal representative of the motion; and (2) the Court, after a hearing, has determined the order in which certain property in the estate shall be sold or transferred. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-106.

Legislative history of Law 3-72. — See note to § 20-701.

Cited in *In re Estate of Burton*, App. D.C., 541 A.2d 599 (1988).

§ 20-704. Notice of appointment to interested persons, creditors and unknown heirs.

(a) Within 20 days after appointment, the personal representative shall, unless notice has already been given under this subsection, publish a notice of the appointment in a newspaper of general circulation of the District of Columbia and any other publication the Court may order or provide by Rule once a week for 3 successive weeks. This notice shall announce the appointment and address of the personal representative, state whether administration is supervised or unsupervised, and notify creditors of the estate to present their claims. The personal representative shall file with the Register a certification specifying the date and content of the published notice. The notice shall be substantially in the following form:

To all persons interested in the estate of _____

This is to give notice that the undersigned, _____ whose address is _____ was, on _____ appointed personal representative of the estate of _____ who died on _____, (with) (without) a will, and that the personal representative will serve in supervised (unsupervised) administration.

All persons having any objection to such appointment (or to the probate of the decedent's will) shall file an objection with the Register of Wills on or

before _____ (6 months from the date of the first publication of notice under this section).

All persons having claims against the decedent shall present their claims to the undersigned or file their claims with the Register of Wills on or before 6 months from the date of the first publication of this notice.

Any claim not so filed on or before such date shall be unenforceable thereafter.

Any person who is related to the decedent and who does not receive notice of this appointment by mail within 25 days shall so inform the Register of Wills including such person's name, address, and relationship to the decedent.

Personal representative

Date of first publication: _____

(b) Not later than 20 days after appointment, a personal representative (except when notice under this subsection has already been given) shall send, by registered or certified mail to the heirs and legatees of the decedent and to all creditors whose identities are known or whose identities are reasonably ascertainable by reasonably diligent efforts, the text of the first newspaper notice of the appointment of such representative, and the following general information in a form developed by the Court:

(1) the typical duties of a personal representative in estate administration, including a description of the essential steps of estate administration, whether the personal representative is subject to continuing court supervision as provided in section 20-401 et seq., or is an unsupervised personal representative;

(2) how fees for estate administration are determined in this jurisdiction and that the personal representative is to be provided as soon as feasible with an estimate of fees to be claimed against the estate;

(3) the rights of heirs or legatees, the assistance an heir or legatee may provide to the personal representative, and the role of the Register, whether the personal representative is subject to continuing court supervision as provided in section 20-401 et seq., or is an unsupervised personal representative. The personal representative shall certify to the Register that notices under this subsection have been given, whether the personal representative is subject to continuing court supervision as provided in section 20-401 et seq., or is an unsupervised personal representative; and

(4) if the personal representative is not subject to continuing court supervision, the right of any interested person, on petition to the Court duly presented and filed with the Register, to initiate a proceeding involving notice to interested persons and a hearing to impose Court supervision on the estate, or to seek any other court order necessary for protection of rights of the interested person.

(b-1) The personal representative shall certify to the Register that notices under subsection (b) of this section have been given.

(b-2) Within 90 days after the appointment of the personal representative, the personal representative (whether supervised or unsupervised) shall certify

to the Register that the notices required under subsection (b) of this section above have been given.

(c) If a will is admitted to probate after notice has been given under subsections (a) and (b) of this section, the personal representative shall give notice of appointment or reappointment as provided in subsections (a) and (b) of this section: except, that ordinary mail may be substituted for registered or certified mail in accordance with section 20-103. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ff), 42 DCR 63; Apr. 18, 1996, D.C. Law 11-110, § 67, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 19(d), 44 DCR 1271.)

Section references. — This section is referred to in §§ 12-305, 20-305, 20-331, 20-353, and 20-724.

Effect of amendments. — D.C. Law 10-241, in (a), inserted “state whether administration is supervised or unsupervised” in the second sentence of the introductory language and added the language beginning “and that the personal representative” at the end of the first text paragraph of the form; rewrote (b); and substituted “as provided” for “in the manner provided” in (c).

D.C. Law 11-110 validated a previously made substitution of “representative” for “representatives” in the signature line near the end of the form in (a).

D.C. Law 11-255 substituted a semicolon for the period near the end of (b)(3); designated the text following (b)(4) as present (b-1) and redesignated former (b-1) as (b-2); substituted “subsection (b) of this subsection” for “this subsection” in present (b-1); and, in (c), inserted “of this section” twice and made a capitalization change.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-255. — See note to § 16-707.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Cited in *In re Estate of Burton*, App. D.C., 541 A.2d 599 (1988); *In re J.L.N.*, App. D.C., 557 A.2d 1313 (1989); *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

§ 20-705. Filing revised and corrected documents.

If a personal representative discovers that any document previously filed or given to interested persons by such representative or by any predecessor personal representative is incomplete or erroneous in any material respect, such representative shall promptly file with the Register or give to the interested persons a revised and corrected document, stating the correct information, if known; provided, however, that statements contained in the petition for probate need not be revised or corrected if the incomplete or erroneous information will be reflected accurately in inventories or accounts later filed with the Register or given to the interested persons. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(gg), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 inserted “or given to the interested persons” near the beginning and at the end and substituted “promptly file with the Register ... docu-

ment” for “promptly file a revised and corrected document with the Register.”

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Subchapter II. Inventory and Appraisal.

§ 20-711. Inventory; general.

(a) Subject to the provisions of section 20-715, a personal representative shall, within 3 months of appointment, prepare a verified inventory of property owned by the decedent at the time of his death. The inventory shall list each item of property, describe each item of property in reasonable detail, indicate the fair market value of each item of property on the date of the decedent's death, and indicate the type and amount of the encumbrances if any, for each item of property. The personal representative shall include the following items in the inventory of property:

- (1) real property;
- (2) tangible personal property, excluding (A) wearing apparel, other than furs and jewelry, and (B) food for consumption by the family, and (C) family pictures, and (D) family Bibles;
- (3) corporate stocks;
- (4) debts owed to the decedent, including bonds and notes;
- (5) bank accounts, building association shares, savings and loan association accounts, and money;
- (6) debts owed to the decedent by the personal representative; and
- (7) any other interest in property, tangible or intangible, that passes by the terms of a valid will or the law of intestate succession.

(b) If the administration is supervised as provided in section 20-401 et seq., and except as provided in section 20-731, the personal representative shall file with the Court the verified inventory with a certificate that there has been mailed or delivered to all interested persons, within the previous 15 days, a copy of the inventory with a notice that the inventory will be filed on or before a stated date. If the administration is not supervised, section 20-713.1 controls. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(hh), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-712, 20-713, 20-731, and 20-733.

Effect of amendments. — D.C. Law 10-241, in (b), in the first sentence, added "If the administration ... and" at the beginning and substituted "with a notice that" for "or a notice that"; and added the second sentence.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Cited in In re Estate of Burton, App. D.C., 541 A.2d 599 (1988); Godette v. Estate of Cox, App. D.C., 592 A.2d 1028 (1991); Rearden v. Riggs Nat'l Bank, App. D.C., 677 A.2d 1032 (1996).

§ 20-712. Appraisal; supervised administration.

(a) In a supervised administration, the fair market value of each item listed in the inventory, as of the date of death of the decedent, shall be determined by

an appraisal. Except as specifically provided by this subsection, the supervised personal representative may use either the standing appraisers or special appraisers, as the personal representative deems appropriate. The supervised personal representative may appraise the following items listed in section 20-711(a):

(1) items listed in paragraphs (4), (5), and (6); and

(2) items listed in paragraph (3) that are listed on any national or regional exchange or are sold in the over-the-counter market for which bid and asked prices are regularly published.

(b) An appraisal shall be in columnar form, shall describe generally each item that has been appraised, shall assign a value to each item that has been appraised, and shall be verified by the appraiser. A verification under this section shall certify that the appraiser has impartially valued the property described in the appraisal to the best of the appraiser's skill and judgment. Any appraisal not performed by the personal representative shall be delivered to the personal representative immediately upon completion and verification. The name and address of any appraiser shall be indicated on the inventory with the item or items appraised.

(c) An appraisal fee shall be payable only to a person making an appraisal at the request of the personal representative.

(d) If the filing of the inventory was not required within 3 months after the appointment of the personal representative, either because the administration was at that time unsupervised or because it was waived pursuant to section 20-731, and if the inventory is subsequently required to be filed, the requirement for appraisals in that event shall be excused unless otherwise ordered by the Court for good cause shown. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ii), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 rewrote the section heading; in (a), added "In a supervised administration" at the beginning of the first sentence, inserted "supervised" in the second and third sentences, and substituted "or special appraisers, as the personal representative deems appropriate" for "or for good cause shown, special appraisers" in the second sentence; and added (d).

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-713. Supervised administration; supplemental inventory; reappraisal.

(a) Except as provided in section 20-731, the supervised personal representative shall report to the Court any property discovered after the filing of the original inventory by filing a supplemental inventory. For each item of after-discovered property, the supplemental inventory shall satisfy the requirements of section 20-711(a) and shall be certified in accordance with subsection (c) of this section.

(b) A supervised personal representative shall have any item reappraised upon discovering that the original appraisal was erroneous or misleading. The

§ 20-713.1 PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES

supervised personal representative shall file the reappraisal and certification required by subsection (c) with the Court.

(c) A supplemental inventory or reappraisal filed with the Court shall be accompanied by a certification by the supervised personal representative that there has been mailed or delivered to all interested persons within the previous 15 days a copy of the supplemental inventory or reappraisal. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(jj), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(e), 44 DCR 1271.)

Section references. — This section is referred to in §§ 20-731 and 20-733.

Effect of amendments. — D.C. Law 10-241 added "Supervised administration" at the beginning of the section heading; inserted "supervised" throughout the section; and substituted "copy" for "notice" in (c).

D.C. Law 11-255 added "of this section" in (a).

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Legislative history of Law 11-255. — See note to § 16-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-713.1. Unsupervised administration; inventory and appraisal duties of unsupervised personal representative.

(a) If the administration is unsupervised, the personal representative, if not a special administrator or a successor to another representative who has previously discharged this duty, shall, within 3 months after appointment, prepare and deliver or mail to each interested person an inventory of property owned by the decedent at the time of death, listing each item of such property with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

(b) The personal representative may also file the verified original of the inventory for record with the Court.

(c) The personal representative may use the standing appraisers or may employ any other qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items appraised.

(d) If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the Court if the original inventory was filed, and mail or deliver copies thereof to the interested persons. (Mar. 21, 1995, D.C. Law 10-241, § 3(kk), 42 DCR 63.)

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-714. Revision of inventory.

Whether the administration is or is not supervised, any interested person may, at any time before the estate is closed, petition the Court for revision of any value assigned to any item in the inventory and for inclusion or exclusion of any item erroneously omitted or listed in the inventory. After due notice and hearing, the Court may require such revision as it deems appropriate. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ll), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 rewrote this section.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-715. Inventory of successor personal representative.

Except as provided in section 20-731, within 3 months of appointment, a supervised successor personal representative shall either file a new inventory to replace the inventory filed by a previous personal representative or file a written consent to the items as listed and valued in such previous inventory. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(mm), 42 DCR 63.)

Section references. — This section is referred to in § 20-711.

Effect of amendments. — D.C. Law 10-241 inserted “supervised” preceding “successor.”

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Subchapter III. Accounting.

§ 20-721. Duty to account; supervised administration.

Except as provided in section 20-731, a supervised personal representative shall prepare verified written accounts of the management and distribution of the decedent’s property at the times and in the manner prescribed in this subchapter. The personal representative shall file the account with a certificate that there has been mailed or delivered to all interested persons, within the previous 15 days, a copy of the account with a notice that the account will be filed on or before a stated date. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(nn), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-725 and 20-731 to 20-733.

Effect of amendments. — D.C. Law 10-241

added “supervised administration” at the end of the section heading; inserted “supervised” preceding “personal representative” in the first

sentence, and substituted "with a notice" for "or a notice" in the last sentence.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Nondiscretionary statutory duties. — Nondiscretionary statutory duties to (1) account for and preserve all receipts, and (2) receive court approval before taking compensation from the estate, are at the heart of orderly

and accountable estate administration, and do not come within the ambit of any arguably valid exculpatory clause excusing negligence in the exercise of discretion. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Waiver of duty to account. — Where a Virginia conservator attempts to waive the filing of an account in a District of Columbia estate on behalf of her ward, the Superior Court must apply to the Virginia court for the waiver of the right to the accountings in the District of Columbia estate. *Estate of Charuhas*, 121 WLR 147 (Super. Ct. 1993).

§ 20-722. Initial account; supervised administration.

A supervised personal representative's initial account of the administration of the decedent's property shall contain:

(a) the total value of property as shown in all inventories made prior to the date of the account;

(b) all receipts of the estate made prior to the date of the account;

(c) each purchase, sale, lease, transfer, compromise, settlement, disbursement and distribution of assets of the estate, a description of each such transaction, and a statement of the amount by which it affects the amounts referred to in paragraphs (a) and (b); and

(d) the value of any remaining assets in the possession or control of the personal representative. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(o), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-731 and 20-732.

Effect of amendments. — D.C. Law 10-241 added "supervised administration" at the end of the section heading; and inserted "supervised" in the introductory language.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Reimbursement disallowed. — Where estate representative did not follow the rules for documenting cash expenditures and, instead, presented cancelled checks and receipts that either had no relationship to each other, or had no relationship to the estate, the trial court did not err in disallowing reimbursement. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Cited in *In re Estate of Burton*, App. D.C., 541 A.2d 599 (1988); *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

§ 20-723. Subsequent account; supervised administration.

After an initial account has been rendered, subsequent accounts, whether filed by the same supervised personal representative or by a successor, shall contain:

(a) the value of any assets in the possession or control of the personal representative as shown in the previous account;

(b) the value of assets as shown in any inventory made since the previous account;

(c) all receipts of the estate since the date of the previous account;

(d) each purchase, sale, lease, transfer, compromise, settlement, disbursement and distribution of assets since the previous account, a description of each such transaction, and a statement of the amount by which it affects the amounts referred to in paragraphs (a), (b), and (c); and

(e) the value of any remaining assets in the possession or control of the personal representative. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(pp), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-731 and 20-732.

Effect of amendments. — D.C. Law 10-241 added “supervised administration” at the end of the section heading; and inserted “supervised” in the introductory language.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Beneficiary access to accounts. — The District of Columbia Probate Reform Act requires accounts to contain the value of any assets and to list all transfers or sales that affect the estate, but it does not address whether the financial accounts of a corporation

held by the estate must be made available to the beneficiaries. *Jones v. Hagans*, App. D.C., 634 A.2d 1219 (1993).

There was no reason for further disclosure of corporation’s books to will beneficiary where the information was not critical. *Jones v. Hagans*, App. D.C., 634 A.2d 1219 (1993).

Reimbursement disallowed. — Where estate representative did not follow the rules for documenting cash expenditures and, instead, presented cancelled checks and receipts that either had no relationship to each other, or had no relationship to the estate, the trial court did not err in disallowing reimbursement. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Cited in *In re Estate of Burton*, App. D.C., 541 A.2d 599 (1988); *Rearden v. Riggs Nat’l Bank*, App. D.C., 677 A.2d 1032 (1996).

§ 20-724. When to render accounts; supervised administration.

(a) *General.* — Except as provided in section 20-731, a supervised personal representative shall render accounts:

(1) within one year and one day of the first publication of notice pursuant to section 20-704;

(2) within 9 months after the account referred to in paragraph (1) of this subsection and within 9 months of each subsequent account until the filing of the final account or the termination of the supervised personal representative’s appointment;

(3) upon termination of the supervised personal representative’s appointment, as provided in subchapter III of Chapter 5; and

(4) at such other times as may be ordered by the Court.

(b) *Extensions.* — Upon written application of the supervised personal representative stating reasons for the request, the Court may, for good cause shown, extend the time for rendering an account to a specified date. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(qq), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(f), 44 DCR 1271.)

Effect of amendments. — D.C. Law 10-241 added “supervised administration” at the end of the section heading; and inserted “supervised” throughout the section.

D.C. Law 11-255 inserted “of this subsection” in (a)(2).

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Legislative history of Law 11-255. — See note to § 16-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Beneficiary access to accounts. — This act requires accounts to contain the value of any assets and to list all transfers or sales that affect the estate, but it does not address whether the financial accounts of a corporation

held by the estate must be made available to the beneficiaries. *Jones v. Hagans*, App. D.C., 634 A.2d 1219 (1993).

There was no reason for further disclosure of corporation's books to will beneficiary where the information was not critical. *Jones v. Hagans*, App. D.C., 634 A.2d 1219 (1993).

§ 20-725. Failure to render account.

A supervised personal representative may be removed as provided in section 20-527 upon failure to file an account or the accompanying certificate as required by section 20-721. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(rr), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 inserted "supervised."

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-726. Exceptions to account; supervised administration.

Any interested person may file an exception to an account with the Register within 30 days of the filing of the account. Such person shall mail a copy of the exception to the personal representative. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ss), 42 DCR 63.)

Section references. — This section is referred to in § 20-736.

Effect of amendments. — D.C. Law 10-241 added "supervised administration" at the end of the section heading.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Discovery rule. — Under the discovery rule, the residuary legatees are not time-barred from contesting the personal representative's power to pay expenses related to the devised realty from the residuary estate. *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

Subchapter IV. Waiver of Inventories and Accounts.

§ 20-731. Waiver of filing; supervised administration.

(a) A supervised personal representative shall be excused from filing with the Court the inventories required by sections 20-711 and 20-713, and the accounts required by sections 20-721, 20-722, and 20-723 if each heir or legatee signs a written waiver filed with the Register. A waiver under this section shall state that the heirs or legatees are aware of their right to require the filing of inventories and accounts and of their right to revoke the waiver under subsection (b) of this section. Unless the will specifically provides otherwise, a trustee as legatee may authorize and sign a waiver under this section.

(b) Any heir or legatee, including a trustee as legatee, who has signed a waiver under subsection (a) of this section may require the filing of inventories and accounts as provided in subchapters II and III of this chapter by filing a written demand with the Register within 7 days of sending the final account to interested persons.

(c) If the will waives the filing of inventories and accounts, the supervised personal representative shall similarly be excused from filing with the Court such inventories and accounts. In that event, the Court may order the filing of inventories or accounts only after a hearing and for good cause shown. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(tt), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(g), 44 DCR 1271.)

Section references. — This section is referred to in §§ 20-403, 20-711, 20-713, 20-715, 20-721, and 20-724.

Effect of amendments. — D.C. Law 10-241 added “supervised administration” at the end of the section heading; in the first sentence of (a), inserted “supervised” preceding “personal representative” and deleted “each heir or legatee is a personal or copersonal representative for the estate and” preceding “each heir”; inserted “and sign” in the last sentence of (a); and added (c).

D.C. Law 11-255 added “of this section” in the second sentence of (a).

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Legislative history of Law 11-255. — See note to § 16-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Waiver by all heirs and legatees. — In waiving an account, all heirs and legatees must waive their right to the account in order for such a waiver to be effective. *Estate of Charuhas*, 121 WLR 147 (Super. Ct. 1993).

Foreign conservators. — Where a Virginia conservator attempts to waive the filing of an account in a District of Columbia estate on behalf of her ward, the Superior Court must apply to the Virginia court for the waiver of the right to the accountings in the District of Columbia estate. *Estate of Charuhas*, 121 WLR 147 (Super. Ct. 1993).

§ 20-732. Waiver of formal Court audit; supervised administration.

(a) A supervised personal representative shall be excused from a formal Court audit of the accounts required by sections 20-721, 20-722, and 20-723 if authorized by written waiver signed by each heir or legatee and filed with the Register. A waiver under this section shall state that the heirs or legatees are aware of their right to require a formal Court audit of accounts and of their right to revoke the waiver under subsection (c) of this section. Unless the will specifically provides otherwise, a trustee as legatee may authorize and sign a waiver under this section.

(b) Upon the filing of a waiver under this section, the Court shall conduct a cursory review to determine if the accounts appear regular on their face and are supported by reasonable documentation.

(c) Any heir or legatee, including a trustee as legatee, who has signed a waiver under subsection (a) of this section, may require a formal Court audit of accounts by filing a written demand with the Register within 20 days of the approval of the final account under section 20-1301. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(uu), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(h), 44 DCR 1271.)

Effect of amendments. — D.C. Law 10-241 added “supervised administration” at the end of the section heading; and, in (a), inserted “supervised” preceding “personal representative” in the first sentence and “and sign” in the last sentence.

D.C. Law 11-255 added “of this section” in the second sentence of (a).

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Legislative history of Law 11-255. — See note to § 16-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-733. Right of heir or legatee.

Nothing shall excuse a personal representative, whether supervised or unsupervised, from the duty to mail or deliver inventories and accounts to each interested person as provided in sections 20-711, 20-713, 20-721 and 20-734. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(vv), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 inserted “whether supervised or unsupervised” and substituted “20-711, 20-713, 20-721 and 20-734” for “20-711, 20-713, and 20-721.”

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Cited in Estate of Charuhas, 121 WLR 147 (Super. Ct. 1993); Rearden v. Riggs Nat'l Bank, App. D.C., 677 A.2d 1032 (1996).

§ 20-734. Duty to account; unsupervised administration.

An unsupervised personal representative shall account to interested persons for his receipts, disbursements, and distribution of estate assets at reasonable intervals, or on reasonable demand, and may be compelled to account to the Court in a proceeding initiated by an interested person, following notice and hearing. (Mar. 21, 1995, D.C. Law 10-241, § 3(ww), 42 DCR 63.)

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-735. Optional proceedings, terminating unsupervised administration; testate or intestate; Certificate of Completion.

(a) Unless otherwise ordered by the Court for good cause shown in a particular matter, the personal representative in an unsupervised administration shall close the estate by filing with the Court a Certificate of Completion, which shall be verified and in a form prescribed by the Court. Such Certificate may be filed at any time, but in no event prior to the expiration of the time for filing creditors' claims against the estate.

(b) The Certificate of Completion shall include a statement that:

- (1) the time for the presentation of creditors' claims has expired;
- (2) all interested persons have been sent a copy of an account and a notice of each one's right to object within 60 days after such account was sent, and

that all claims of that interested person against the personal representative shall be barred unless such an objection is made;

(3) either each interested person has consented in writing to the account as stated, or there was no written objection within the 60-day period described above;

(4) distribution has been made in accordance with such account;

(5) all known claims of creditors which are not barred have been fully satisfied or otherwise settled or, if any claim remains undischarged, whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or a detailed explanation of what other arrangements have been made to accommodate all such outstanding liabilities; and

(6) the personal representative has satisfied all administration expenses and other obligations of the estate incurred or authorized by the personal representative, and has otherwise fully administered the estate.

(c) The Certificate of Completion shall also contain a list containing the name and address of each recipient of the copy of the account and the corresponding notice, as well as a certificate of service confirming that each of those individuals or entities also received a copy of the Certificate of Completion.

(d) Any interested person or other recipient of a copy of the account may object to the account by mailing or delivering to the personal representative or to the Court, within the 60-day period described above, a written statement of his or her objections to the account as stated. (Mar. 21, 1995, D.C. Law 10-241, § 3(xx), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(i), 44 DCR 1271.)

Section references. — This section is referred to in § 20-736.

Effect of amendments. — D.C. Law 11-255 inserted the first occurrence of “of Completion” in (c).

Legislative history of Law 10-241. — See note to § 20-701.1.

Legislative history of Law 11-255. — See note to § 16-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-736. Finality.

In the absence of fraud, neither the personal representative nor any distributee of estate property shall be liable for any claim, liability, or damage claimed by any interested person (or any person or entity claiming by or through such interested person):

(1) who has received the notice and copy of the final account of the unsupervised personal representative, and not objected to the final account within the 60-day period described in section 20-735(b); an unsupervised personal representative may send such notice and copy of the final account to any one or more creditors of the decedent or of the estate, and any such creditor not so objecting in a timely manner shall be similarly bound; or

(2) who has not filed an exception to the final account of the supervised personal representative within the time and manner prescribed in section 20-726. (Mar. 21, 1995, D.C. Law 10-241, § 3(yy), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(j), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 made a punctuation change in (1).

Legislative history of Law 10-241. — See note to § 20-701.1.

Legislative history of Law 11-255. — See note to § 16-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Subchapter V. Powers of Personal Representative.

§ 20-741. General powers.

Except as otherwise validly limited by the will, this title, or by an order of Court made in accordance with this title, a personal representative may, in addition to any power or authority contained in the will and any other common-law or statutory power, properly:

(1) take possession of and hold assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform the decedent's contracts that continue as obligations of the estate, and execute and deliver such deeds or other documents under such circumstances as the contract may provide, unless the personal representative personally is a party by the terms of the contract;

(4) satisfy written charitable pledges of the decedent, which by their terms survive the death of the decedent;

(5) deposit funds for the account of the estate, including moneys received from the sale of other assets, in federally insured checking accounts, in federally insured interest-bearing accounts or in federally insured short-term loan arrangements, or in accounts or short-term investment trusts administered pursuant to, or in compliance with, the regulations of the United States Comptroller of the Currency, or at the request of the personal representative, agree to deposit any of the assets of the estate with any financial institution in such a manner that the assets cannot be withdrawn or transferred without (A) the written consent of the surety on the bonds or (B) an order of Court; deposits under this subsection shall be made in financial institutions within the District of Columbia or in any state that permits personal representatives to make deposits in the District of Columbia;

(6) acquire or dispose of property, real or personal, including land in this or another jurisdiction, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing, or erect new, party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without the option to purchase or renew, for a term within or extending beyond the period of administration;

(10) vote stocks or other securities in person or by general or limited proxy;

(11) hold a security in bearer form or in the name of a nominee, but, in such case, the personal representative shall be liable for any act of the nominee in connection with the security so held;

(12) obtain insurance to protect the property of the estate against damage, loss, and liability, and to protect the personal representative against liability to third persons;

(13) effect a fair and reasonable compromise with any creditor or obligee;

(14) pay taxes, assessments, and compensation of the personal representative, and other expenses incident to the administration of the estate;

(15) sell or exercise stock subscription, conversion or option rights; consent to or oppose, directly or through a committee or other agent, the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(16) pay the decedent's funeral expenses including the cost of burial space and a suitable tombstone or marker, not exceeding \$5,000, except as provided in sections 20-906 and 20-907;

(17) employ, for reasonable compensation, accountants, auditors, investment or financial advisors, attorneys, appraisers, brokers, or other persons with special skills to advise or assist the personal representative in the performance of such representative's administrative duties, and to pay them reasonable compensation and reimbursement for costs incurred;

(18) prosecute or defend or submit to arbitration actions, claims, or proceedings in any appropriate jurisdiction for the benefit of the estate, including the commencement of any personal action that the decedent might have commenced, or to compromise, arbitrate, settle, or otherwise adjust any claims, charges, debts, or demands against or in favor of the estate;

(19) continue unincorporated businesses or ventures in which the decedent was engaged at the time of death (A) in the same business form for a period of not more than 4 months after the representative's appointment if continuation is a reasonable means of preserving the value of the business, including goodwill; provided, that the personal representative shall file a bimonthly statement of income and expenses and a balance sheet with the Register; and (B) throughout the period of administration if the business is incorporated after the death of the decedent in accordance with paragraph (20) of this section;

(20) incorporate businesses or ventures in which the decedent was engaged at the time of death if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(21) exercise options, rights, and privileges contained in any life insurance policy, annuity, or endorsement contract constituting property of the estate, including the right to obtain the cash surrender value, convert any such

policy to any other type of policy, revoke any mode of settlement, and pay any part or all of the premiums on any such policy or contract;

(22) pay valid claims and distribute the estate as provided in this title;

(23) release or terminate mortgages or security interests, if the obligation secured by the mortgage or security interest was fully satisfied during the decedent's lifetime or during the administration of the estate;

(24) make partial distributions, in cash, in kind, or both, from time to time during the administration;

(25) invest in any real or personal property of the estate; lease, exchange, grant options to purchase, or sell any real or personal property of the estate (except property specifically devised or bequeathed under the will), at public or private sale, for cash or on credit, with or without security; and borrow money for the purpose of protecting real or personal property (and pledge property as security for such loan);

(26) terminate, sublet, or assign a leasehold estate of the decedent which was the decedent's actual residence;

(27) designate the personal representative on any document as an executor, if the decedent died testate, or as an administrator, if the decedent died intestate;

(28) continue any unincorporated businesses or ventures in which the decedent was engaged at the time of his or her death (A) in the same business form for a period of not more than 4 months from the date of appointment of the personal representative if continuation is a reasonable means of preserving the value of the business, including good will; (B) in the same business form for any additional period of time that may be approved by order of the Court after notice to the interested persons; or (C) throughout the period of administration if the business is incorporated after decedent's death in accordance with paragraph (20) of this section; and

(29) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(zz), 42 DCR 63.)

Cross references. — As to licenses for funeral directors, see § 2-2805.

As to sale, assignment, or other transfer of retail service station marketing agreement, see § 10-225.

Effect of amendments. — D.C. Law 10-241 rewrote this section.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Expenses of maintaining property. — When the testator's intent is to pass property whole or in kind to the devisee, without encumbrance, and when the property generates no income, there is no unfairness in permitting the

residue to bear the expense of maintaining the property prior to distribution. *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

Section 20-105 and this section, by not only placing on the personal representative the responsibility for maintaining the decedent's property until it is distributed but also authorizing him to pay the expenses of doing so, necessarily impose the cost of such maintenance on the entire estate when the property is subject to exoneration. *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

Reimbursement disallowed. — Where estate representative did not follow the rules for documenting cash expenditures and, instead, presented cancelled checks and receipts that either had no relationship to each other, or had no relationship to the estate, the trial court did not err in disallowing reimbursement. *Godette*

v. Estate of Cox, App. D.C., 592 A.2d 1028 (1991).

Cited in In re Hopkins, App. D.C., 677 A.2d

55 (1996); Lemp v. Keto, App. D.C., 678 A.2d 1010 (1996).

§ 20-742. Court order.

A personal representative may at any time petition the Court for permission to act in any matter relating to the administration of the estate. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Apr. 27, 1994, D.C. Law 10-110, § 3, 41 DCR 1023; Mar. 21, 1995, D.C. Law 10-241, § 31, 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 deleted (b) and the designation “(a)” at the beginning.

Neither D.C. Law 10-110 nor D.C. Law 10-241 referred to the other, and effect has been given to D.C. Law 10-241 as the one signed later.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-110. — Law 10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Intent of section. — From the clear and repeated statements of legislative purpose, it is apparent that the Council of the District of

Columbia did not intend for the common-law distinction between realty and personalty to pose an obstacle to payment of the family allowance through the sale of realty if the personal representative deemed the sale necessary. In re Estate of Burton, App. D.C., 541 A.2d 599 (1988).

Settlement of litigation. — Absent abuse of discretion, trial court orders granting petitions for authority to settle litigation under this section will be upheld. *Dickson v. Mintz*, App. D.C., 559 A.2d 331 (1989).

In deciding whether to grant the petition to settle, the trial court must determine that the settlement is in the best interest of the estate, and that the personal representative has fulfilled his or her fiduciary duty to act as a prudent person. In making these determinations, the court should consider, among other factors, the validity of the claim, the personal representative’s investigation of the claim, and the defenses to the claim, and the reasonableness of the compromise. *Dickson v. Mintz*, App. D.C., 559 A.2d 331 (1989).

Cited in Estate of Presgrave v. Stephens, App. D.C., 529 A.2d 274 (1987); In re Estate of Burton, App. D.C., 541 A.2d 599 (1988).

§ 20-743. Improper exercise of power; breach of fiduciary duty.

If any personal representative’s exercise of power concerning the estate is improper, such representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust. The exercise of power in violation of a Court order, or contrary to the provisions of the will may be a breach of duty. The rights of purchasers and others dealing with a personal representative are determined as provided in section 20-744 and are not necessarily affected by the fact that the personal representative breached a fiduciary duty in the transaction. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-701.

Breach of duty to maintain estate. — Legatees whose potential property interests

flowed from a will could not proceed directly against the trustee of a pourover inter vivos trust as if the legatees were beneficiaries under the trust; instead, the legatees had to proceed

§ 20-743.1 PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES

in the first instance against the entities with whom the legatees had a fiduciary relationship — the personal representatives of the probate estate — in order to compel the representatives to proceed against the trustee on behalf of the estate. *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

Legatees clearly have standing to raise objections to, and seek redress for, actions or inac-

tions by the personal representatives that diminish the size of the property interests passing to the legatees through the probate estate. *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

Cited in *In re Estate of Burton*, App. D.C., 541 A.2d 599 (1988); *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

§ 20-743.1. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.

Any sale, lease, or encumbrance to the personal representative, the personal representative's spouse, agent or attorney, or any corporation, trust, or other entity in which such individual has a substantial beneficial interest, or any other transaction which is affected by a substantial conflict of interest on the part of the personal representative, may be set aside by the Court in proceedings initiated by any interested person except one who has consented after fair disclosure (and any person or entity claiming by or through such interested person) unless:

(1) the will authorized such dealings with the personal representative, either generally or with regard to a specific transaction or type of transaction;

(2) a contract entered into by the decedent authorized such a transaction; or

(3) the transaction is approved by the Court after notice to the interested persons. (Mar. 21, 1995, D.C. Law 10-241, § 3(bbb), 42 DCR 63.)

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-701.1.

§ 20-744. Protection of person dealing with personal representative.

Except as otherwise provided in section 20-753, a person who in good faith either assists or deals with a personal representative for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 20-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not in substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securi-

ties by fiduciaries. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ccc), 42 DCR 63.)

Section references. — This section is referred to in § 20-743.

Effect of amendments. — D.C. Law 10-241 rewrote this section.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Subchapter VI. Claims by Personal Representatives and Attorneys.

§ 20-751. Compensation.

Except as may otherwise be ordered by the Court for good cause shown in respect to a supervised personal representative or a special administrator, a personal representative is entitled to reasonable compensation for services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision either before or after qualifying and be entitled to reasonable compensation. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the Court. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ddd), 42 DCR 63.)

Section references. — This section is referred to in § 20-752.

Effect of amendments. — D.C. Law 10-241 rewrote this section.

Legislative history of Law 3-72. — See note to § 20-701.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

Section replaced customary percentage test. — This section replaced customary percentage test for determining compensation for personal representatives and attorneys with a procedural framework requiring the personal representative to submit a written request for compensation to the Court, accompanied by verified and substantiating documentation. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Probate Rule 124 implements this section. — Super. Ct. Prob. R. 124 is designed to implement this section regarding the claims of personal representatives and attorneys to the estate. It provides that a request for compensation "may be submitted substantially in accordance with the following format," which includes spaces for insertion of the amount of the attorney's fees and attorney verification. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Purpose of documentation. — The pur-

pose of the documentation is to aid the Court in its determination of the reasonableness of the requested fee for apparently the sole purpose of protecting the interests of claimants under the will. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Court supervision concerns. — The court's concern is nonsupervision of fees, when supervision is required by statute. In re Estate of Eskind, 122 WLR 513 (Super. Ct. 1994).

Attorney time records. — Counsel who filed a statement of services, which included improperly recorded time entries rounded to quarter-hour increments, had fees reduced by ten percent of the total fees. In re Estate of Eskind, 122 WLR 513 (Super. Ct. 1994).

Dispute between personal representative and attorney over apportionment of fees. — Although the language of § 20-903(a)(2) is broad enough to include a dispute between the personal representative and the attorney for the estate over the apportionment of fees, the nature of their dispute is not the kind contemplated by the general statutory claims procedure. Rather, the drafters of the legislation contemplated that such disputes between the personal representative and the attorney with respect to costs of administration of the estate would be addressed under this subchapter and not under Chapter 9 (claims

against the decedent's estate). *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Nondiscretionary statutory duties. — Nondiscretionary statutory duties to (1) account for and preserve all receipts, and (2) receive court approval before taking compensation from the estate, are at the heart of orderly and accountable estate administration, and do not come within the ambit of any arguably valid exculpatory clause excusing negligence in the exercise of discretion. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Court authorization required. — A personal representative has no right to take fees from the estate before court authorization. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Rounding of hours. — The maximum hour rounding that should be permitted, and which the vast majority of attorneys practice, is to a tenth of an hour. In re *Estate of Torchiana*, 121 WLR 2477 (Super. Ct. 1993).

Disqualification from receiving compensation. — A trial court's conclusion that a former co-personal representative of a probate estate had disqualified himself from receiving

compensation because of "unclean hands" did not necessitate the court to make specific findings of fact with regard to the factors enumerated in this section. *Lemp v. Keto*, App. D.C., 678 A.2d 1010 (1996).

Compensation denied. — Where the trial court found that representative had failed to file the documentation the court needed in order to apply the statutory factors, there was no abuse of discretion in denying compensation. *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

Attorney to estate not interested party. — Because the attorney to an estate is not among the four categories listed under § 20-101(d)(1) as an "interested person," the probate judge is precluded under the Probate Reform Act from considering an "exception" that has been filed by the attorney pursuant to this section. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987) (decision prior to amendment by D.C. Law 10-241.).

Cited in *Williams v. Ray*, App. D.C., 563 A.2d 1077 (1989); In re *Ray*, App. D.C., 675 A.2d 1381 (1996); *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

§ 20-752. Expenses of estate litigation.

Without regard to the provisions of section 20-751, when a personal representative or a person nominated as personal representative defends or prosecutes in good faith and with just cause any proceeding relating to the decedent's estate, whether successful or not, such personal representative shall be entitled to receive from the estate any necessary expenses and disbursements relating to such proceeding. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-701.

Cited in *Poe v. Noble*, App. D.C., 525 A.2d

190 (1987); *Duggan v. Keto*, App. D.C., 554 A.2d 1126 (1989).

§ 20-753. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

(a) On petition of any interested person (other than one who has consented after fair disclosure, and any person or entity claiming by or through such interested person) or on appropriate motion if administration is supervised, and after notice to all interested persons and hearing, the reasonableness of the need for or scope of employment of any person or entity employed by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person or entity so employed, or the reasonableness of the compensation claimed or taken by the personal representative for the personal representative's own services, may be reviewed by the Court. Any person or entity who

has received from an estate compensation for services rendered in excess of what the Court finds to be reasonable may be ordered to make appropriate refunds if such person or entity was given due notice of the petition and hearing, and the right to participate in such hearing.

(b) In determining the reasonableness of any employment or compensation as provided in subsection (a) of this section, the Court shall consider the following factors (as shown in the verified statements of the personal representative or of any other recipient of such compensation), as well as any other factors deemed relevant by the Court:

(1) the reasonable relationship of the compensation to the nature of the work performed;

(2) any estimate of such compensation provided to the personal representative (or to the interested persons, in the case of compensation to the personal representative who is also counsel for the estate);

(3) the reasonableness of the time spent, including the number of hours spent and the usual hourly compensation for the work performed;

(4) the nature and complexity of the matters involved and difficulties encountered, and the results achieved; and

(5) whether or not all relevant time limitations have been met (or the reasons for any delay).

(c) The payment of any compensation to any attorney pursuant to this provision (including compensation taken or claimed by an attorney as personal representative), even if later ordered by the Court to be refunded to the estate in whole or in part, shall not in and of itself be considered to be a taking or misappropriation of client funds under (or any other such violation of) any applicable ethical or disciplinary statutes or rules by that attorney. (Mar. 21, 1995, D.C. Law 10-241, § 3(eee), 42 DCR 63.)

Section references. — This section is referred to in § 20-744.

Legislative history of Law 10-241. — See note to § 20-701.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-701.1.

CHAPTER 9. CLAIMS.

Sec.	Sec.
20-901. Claim not paid in normal course of administration.	20-908. Action on claims; remedy for failure to act.
20-902. Effect of statute of limitations.	20-909. Payment of claim.
20-903. Limitation on presentation of claims against the estate.	20-910. Meeting of creditors.
20-904. Exempt assets.	20-911. Claim not yet due.
20-905. Manner of presentation of claim.	20-912. Secured claim.
20-906. Order of payment.	20-913. [Repealed].
20-907. Funeral expenses.	20-914. Execution and levy prohibited.

§ 20-901. Claim not paid in normal course of administration.

No proceeding to enforce a claim against a decedent's estate may be revived or commenced before the appointment of a personal representative. After appointment, and until the estate is closed, the procedures prescribed by this chapter shall be followed. After the estate is closed, a creditor whose claim has not been barred may recover directly from the persons to whom property has been distributed as provided in sections 20-1302 and 20-1303 or from a personal representative individually as provided in section 20-1303. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Accrual of claim against estate. — The general probate rule is that, in the absence of any express requirement, a claim against the estate that arises after the death of the decedent, such as expenses incurred in the administration of the estate, need not be initially presented to the executor. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Filing of claims. — The reference to "proceedings" should be read to preclude the filing

of lawsuits against an estate before the appointment of the personal representative; but it should not be read to bar the mere lodging of a claim earlier. *District of Columbia v. Gantt*, App. D.C., 558 A.2d 1120 (1989).

Claims for attorney's fees. — A claim for attorney's fees for services rendered to an estate may be made directly to the Probate Court without any necessity for presentation and allowance of the claim by the executor or administrator. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Cited in *Launay v. Launay, Inc.*, App. D.C., 497 A.2d 443 (1985); *Richardson v. Green*, App. D.C., 528 A.2d 429 (1987); *Robinson v. Carney*, App. D.C., 632 A.2d 106 (1993); *Rearden v. Riggs Nat'l Bank*, App. D.C., 677 A.2d 1032 (1996).

§ 20-902. Effect of statute of limitations.

Unless a contrary intent is expressly indicated in the will, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. In an action against the estate of a deceased person, the interval between the death of the deceased and 6 months after the date of the first publication of notice of the appointment of a personal representative (not to exceed 2 years) shall not be computed as a part of the period within

which the action must be brought. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-901.

Cited in *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

§ 20-903. Limitation on presentation of claims against the estate.

(a) *Requirement of presentation; time; limitation.* — Except as otherwise expressly provided by statute with respect to claims of the United States and the District of Columbia, (1) all claims against a decedent's estate, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, shall be barred against the estate, the personal representative, and the heirs and legatees, unless presented within 6 months after the date of the first publication of notice of the appointment of a personal representative; and (2) all claims against the estate based on the conduct of or a contract with a personal representative shall be barred unless an action is commenced against the estate within 6 months of the date the claim arose.

(b) *Liens not affected.* — Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, judgment, or other recorded or otherwise perfected security interest on property of the estate.

(c) *Action instituted before death.* — Nothing in this section shall affect any action that was commenced against the decedent if the decedent had been duly served with process before death; provided, however, that the personal representative shall not be personally liable on account of having paid a claim or distributed assets, without taking into consideration claims prosecuted in accordance with this subsection if, at the time of payment or distribution (1) the personal representative had no actual knowledge of such claim, and (2) the claimant had not timely presented such claim in accordance with section 20-905.

(d) *Claims covered by insurance.* — Notwithstanding the provisions of this section, no claim that survives death shall be barred if: (1) the claimant commences an action against the estate within the period of limitations generally applicable to such causes of action; (2) the decedent was covered by a liability insurance policy at the time of the occurrence on which the claim is based; and (3) the subject matter of the claim is within the scope of that policy; provided, that in that cause of action recovery shall be limited to amounts payable under such liability insurance policy. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in §§ 20-905 and 20-908.

Legislative history of Law 3-72. — See note to § 20-901.

Presentation of claim. — Where at least 1 personal representative had actual notice during the statutory 6-month period of the claim for pre-death legal services, counsel for the estate also knew during that period that the

attorney was making a claim against the estate for legal services before, as well as after, the decedent's death, and no one disputed the merits of the attorney's claim, there was no basis for a discretionary denial of that claim under § 20-905(c). In re *Estate of Phillips*, App. D.C., 532 A.2d 654 (1987).

Effect of subsection (a). — Subsection (a) creates only a cutoff point, not a starting point,

for filing claims. *District of Columbia v. Gantt*, App. D.C., 558 A.2d 1120 (1989).

Disputes between personal representative and attorney over apportionment of fees. — Although the language of subsection (a)(2) of this section is broad enough to include a dispute between the personal representative and the attorney for the estate over the apportionment of fees, the nature of their dispute is not the kind contemplated by the general statutory claims procedure. Rather, the drafters of the legislation contemplated that such disputes between the personal representative and the attorney with respect to costs of administration of the estate would be addressed under subchapter IV of Chapter 7, and not under this

chapter. *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987).

Exoneration. — The provisions of this section do not mention — let alone explicitly abolish — the common-law doctrine of exoneration. Neither do the provisions fairly express the council's intent to abolish the common-law doctrine of exoneration. *Martin v. Johnson*, App. D.C., 512 A.2d 1017 (1986).

Cited in *Launay v. Launay, Inc.*, App. D.C., 497 A.2d 443 (1985); *Eastern Indem. Co. v. Content*, App. D.C., 543 A.2d 1361 (1988); *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989); *Godette v. Estate of Cox*, App. D.C., 592 A.2d 1028 (1991).

§ 20-904. Exempt assets.

Where the decedent was the head of the family or a householder the property exempt under sections 15-501 through 15-503 shall continue to be exempt from all claims against the decedent. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-901.

§ 20-905. Manner of presentation of claim.

(a) A claimant shall present a claim against a decedent's estate by delivering or mailing, return receipt requested, a written statement of the claim, verified in accordance with section 20-102:

- (1) to the personal representative with a copy to the Register; or
- (2) to the Register with a copy to the personal representative.

For purposes of presenting a claim within the 6-month time limits provided in section 20-903, a claim shall be deemed presented if inadvertently it is only sent either to the personal representative or to the Register pursuant to this section.

(b) A statement of a claim shall state:

- (1) the name and address of the claimant;
- (2) the basis of the claim;
- (3) the amount claimed;
- (4) if the claim is not yet due, when the claim will become due;
- (5) if the claim is contingent, the nature of the contingency; and
- (6) if the claim is secured, a description of the security.

(c) The Court may, in its discretion, disallow a claim, in whole or in part, if the claimant fails to comply with subsections (a) and (b) or with the personal representative's reasonable requests for additional information. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(fff), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-343, 20-903, 20-908, and 20-910.

Effect of amendments. — D.C. Law 10-241 inserted "written" preceding "statement of the claim" in the introductory language of (a).

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — See note to § 20-901.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 23, 1995.

Application of Law 10-241. — Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Actual notice. — Where at least 1 personal representative had actual notice during the statutory 6-month period of the claim for pre-death legal services, counsel for the estate also knew during that period that the attorney was making a claim against the estate for legal services before, as well as after, the decedent's death, and no one disputed the merits of the attorney's claim, there was no basis for a discretionary denial of that claim under subsection (c). In re Estate of Phillips, App. D.C., 532 A.2d 654 (1987).

Cited in Launay v. Launay, Inc., App. D.C., 497 A.2d 443 (1985); Poe v. Noble, App. D.C., 525 A.2d 190 (1987); District of Columbia v. Gantt, App. D.C., 558 A.2d 1120 (1989); Sarbacher v. McNamara, App. D.C., 564 A.2d 701 (1989).

§ 20-906. Order of payment.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) funeral expenses, not exceeding \$1,500;
- (2) family allowance, not exceeding \$10,000;
- (3) claims for rent in arrears for which an attachment might be levied by law;
- (4) judgments and decrees of courts in the District of Columbia; and
- (5) all other just claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class. No preference shall be given to claims due and payable over claims not yet due. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ggg), 42 DCR 63.)

Section references. — This section is referred to in §§ 20-353, 20-741, and 20-909.

Effect of amendments. — D.C. Law 10-241 substituted "\$1,500" for "\$750" in (a)(1).

Legislative history of Law 3-72. — See note to § 20-901.

Legislative history of Law 10-241. — See note to § 20-905.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

Cited in In re Estate of Burton, App. D.C., 541 A.2d 599 (1988).

§ 20-907. Funeral expenses.

Where an estate is solvent and the will expressly empowers a personal representative to pay funeral expenses in an amount left to the personal representative's discretion, then no allowance from the Court shall be required. In all other cases, the Court may allow, in its discretion, funeral expenses of the decedent in excess of \$1,500 according to the condition and

circumstances of the decedent, but in no event shall such allowance exceed \$5,000. However, the funeral expenses limit for a solvent estate may be waived if the waiver is in writing, signed by all heirs or legatees, and filed with the Register. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(hhh), 42 DCR 63.)

Section references. — This section is referred to in § 20-741.

Effect of amendments. — D.C. Law 10-241 substituted “\$1,500” for “\$750” and “\$5,000” for “\$1,750” in the second sentence and added the last sentence.

Legislative history of Law 3-72. — See note to § 20-901.

Legislative history of Law 10-241. — See note to § 20-905.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

§ 20-908. Action on claims; remedy for failure to act.

(a) For claims presented as provided in section 20-905 within the time limit prescribed by section 20-903, the personal representative shall mail a notice to each claimant stating (1) that the claim has been allowed in a stated amount; (2) that the claim has been disallowed in whole or in part and advising the claimant of the procedures and time limitations for contesting such disallowance; or (3) that the personal representative will petition the Court to determine whether the claim should be allowed. In allowing a claim, the personal representative may deduct any counterclaim that the estate has against the claimant. If the personal representative notifies a claimant of allowance of a claim, the personal representative may rescind the allowance only within 6 months after the date of the first publication of notice of the appointment of a personal representative, but, in such case the personal representative shall notify the claimant of the extent of the rescission. If the claim is disallowed in whole or in part, the claim is forever barred to the extent of the disallowance unless the claimant files a verified complaint in the Court, not later than 60 days after the mailing of the notice disallowing the claim.

(b) If no action is taken by the personal representative under subsection (a) of this section, the claimant may file a verified complaint in the Court.

(c) Failure of a personal representative to respond to a presented claim shall in no way suspend the operation of any statute of limitation. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-901.

Receivers or trustees. — The appointment of a receiver does not provide relief from the application of this section. *Eastern Indem. Co. v. Content*, App. D.C., 543 A.2d 1361 (1988).

Sufficiency of notice. — Notices sent by estate to claimants rather than to receiver or trustee were sufficient under the due process clause where there was no allegation that the estate knew a receiver or trustee was soon to be appointed. In such circumstances, where the identities of persons are unknown, publication notice is sufficient, thus, notice which is much more likely to come to the attention of affected

parties is sufficient. Thus, the application of this section to claims of corporations who filed claims within the period allowed by § 20-903 and to whom the estate sent timely notices of disallowance, but who failed to file suit within the period required by subsection (a) of this section following notice of disallowance of their claims due to initiation of liquidation or receivership proceedings of which the estate was unaware did not violate the claimant's rights to due process and equal protection of the laws. *Eastern Indem. Co. v. Content*, App. D.C., 543 A.2d 1361 (1988).

Cited in *District of Columbia v. Gantt*, App. D.C., 558 A.2d 1120 (1989).

§ 20-909. Payment of claim.

(a) No later than 8 months from the date of the first publication of notice of the appointment of a personal representative, the personal representative shall, unless the Court extends the time for good cause shown, proceed to pay the claims allowed against the estate in the order of priority prescribed in section 20-906. Any person with a valid unbarred claim or with a valid unbarred judgment who has not been paid within the 8 month period may petition the Court for an order directing the personal representative to pay the claim to the extent that funds of the estate are available for such payment. If the Court extends the time for the personal representative to pay a claim under this subsection, the statutory limit for filing a suit on the claim shall be suspended during the extension of time plus 60 days.

(b) The personal representative may, at any time, pay any just claim which has not been barred, with or without formal presentation, but the personal representative is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(1) the payment was made before the expiration of 6 months from the date of the first publication of notice of the personal representative's appointment and the personal representative failed to require the payee to give adequate security to refund any of the payment necessary to pay other claimants; or

(2) the payment was made due to the negligence or willful fault of the personal representative. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(iii), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 inserted "within the 8 month period" in the second sentence of (a); and substituted "was made due to" for "was made, due to" in (b)(2).

Legislative history of Law 3-72. — See note to § 20-901.

Legislative history of Law 10-241. — See note to § 20-905.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

Cited in Johnson v. Martin, App. D.C., 567 A.2d 1299 (1989); Godette v. Estate of Cox, App. D.C., 592 A.2d 1028 (1991).

§ 20-910. Meeting of creditors.

A personal representative may convene, on a day designated by the Court, a meeting of all creditors whose claims have been duly presented pursuant to section 20-905. The personal representative shall give written notice to all such creditors of the time, date, place and purpose of the meeting which shall be held not less than 10 days from the date of the notice. The Court shall deny or approve any claim in whole or in part at the meeting. The payment of any claim as approved by Court order shall hold harmless the personal representative acting in obedience to it, subject to any perfected appeal. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-901.

§ 20-911. Claim not yet due.

(a) If an unsecured claim which has been proven and which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases, the personal representative or, on petition of the personal representative or the claimant in a special proceeding for that purpose, the Court, may provide for payment of a proven unsecured claim as follows:

(1) if the claimant consents, the claimant may be paid the present value of the claim, taking any uncertainty into account, provided that such present value is determined by arbitration, compromise, or agreement between the claimant and the personal representative; and

(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, creating an escrow account, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

(c) A creditor who holds security for an allowable claim due at some future time may rely on such security under section 20-912 or may file the claim as an unsecured claim not yet due, with the right of withdrawing the claim prior to the taking of any action thereon, and, after such withdrawal, rely on such security rights as provided in section 20-912. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(jjj), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(k), 44 DCR 1271.)

Effect of amendments. — D.C. Law 10-241 rewrote this section.

D.C. Law 11-255 added "and" at the end of (b)(1).

Legislative history of Law 3-72. — See note to § 20-901.

Legislative history of Law 10-241. — See note to § 20-905.

Legislative history of Law 11-255. — See note to § 16-909.1.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

§ 20-912. Secured claim.

(a) A creditor having a secured claim who surrenders the security shall be paid on the basis of the full amount of the claim.

(b) A creditor having a secured claim who does not surrender the security shall be paid on the basis of one of the following:

(1) the full amount of the claim allowed less the amount realized upon exhausting the security, if the creditor, during the course of administration, exhausted the security before receiving payment; or

(2) the full amount of the claim allowed, less the value of the security determined by agreement or by the Court, if the creditor did not exhaust, or did not at the time have the right to exhaust, such security. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in § 20-911.

Legislative history of Law 3-72. — See note to § 20-901.

Mortgage debt. — Where, in her will, testatrix devised her house to her niece “absolutely and in fee simple,” the residue of the estate

must be drawn upon to extinguish the entire amount due and owing under the deed of trust, principal plus interest, and the mortgaged property must pass to beneficiary unencumbered by the deed of trust. *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

§ 20-913. Contingent claim.

Repealed. Mar. 21, 1995, D.C. Law 10-241, § 3, 42 DCR 63.

Legislative history of Law 10-241. — See note to § 20-905.

Application of Law 10-241. — See Applica-

tion of Law 10-241 and Emergency act amendment notes to § 20-905.

§ 20-914. Execution and levy prohibited.

No execution shall issue upon nor shall any levy be made against any property of the estate under any judgment against a decedent or a personal representative. No claim (which is not by its terms secured) shall attach to any particular estate asset, real or personal, whether in the hands of the personal representative or of any bona fide purchaser, or to the proceeds from the sale of any such asset. The provisions of this section shall not be construed to prevent the enforcement of mortgages, deeds of trust, pledges, liens, or other security interests upon property in an appropriate proceeding. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(III), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 rewrote the section.

Legislative history of Law 3-72. — See note to § 20-901.

Legislative history of Law 10-241. — See note to § 20-905.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

Cited in *Robinson v. Carney*, App. D.C., 632 A.2d 106 (1993).

CHAPTER 11. SPECIAL PROVISIONS RELATING TO DISTRIBUTION.

Sec.

20-1101. [Repealed].

20-1102. Distribution in kind; valuation; method.

20-1103. Distribution in kind; assignment, transfer and release of property.

20-1104. Distribution; effect.

Sec.

20-1105. Petition for purpose of distribution.

20-1106. Distribution to a minor.

20-1107. Distribution to fiduciary for nonresident person under legal disability other than minority.

§ 20-1101. Renunciation; legatee or heir.

Repealed. Mar. 6, 1991, D.C. Law 8-204, § 10, 37 DCR 8439.

Legislative history of Law 8-204. — Law 8-204, the "District of Columbia Uniform Disclaimer of Property Interest Act of 1990," was introduced in Council and assigned Bill No. 8-84, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 20, 1990,

and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-279 and transmitted to both Houses of Congress for its review.

Uniform Disclaimer of Property Interests. — See § 21-2091 et seq.

§ 20-1102. Distribution in kind; valuation; method.

Subject to the terms of any will and the needs of administration, the personal representative shall distribute the assets of a decedent's estate in kind to the extent possible through application of the following provisions:

(a) A specific legatee shall receive distribution of the legacy given to such legatee;

(b) Any family allowance, or legacy payable in money may be satisfied by value in kind provided:

(1) the person entitled to the payment has not demanded payment in cash;

(2) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(3) no residuary legatee has requested that the asset in question remain a part of the residue of the estate.

(c) The residuary estate shall be distributed in kind when there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(c-1) For the purpose of valuation under subsection (b)(2) of this section, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value

of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(d) After the probable claims against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any such person to object to the proposed distribution terminates if such person fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(mmm), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 added (c-1).

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — Law 3-72, the “District of Columbia Probate Reform Act of 1980,” was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law

10-241, the “Probate Reform Act of 1994,” was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Application of Law 10-241. — Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Cited in *Johnson v. Martin*, App. D.C., 567 A.2d 1299 (1989).

§ 20-1103. Distribution in kind; assignment, transfer and release of property.

If distribution in kind is made, the personal representative shall, upon the request of the distributee, execute and deliver an instrument of distribution assigning, transferring, or releasing property to the distributee as evidence of the distributee's title to the property. Distribution of real property may be effected by quit claim deed. The personal representative shall pay all costs of deed recordation as a cost of administration of the estate. In addition to any other indexing, a deed distributed under this section shall be recorded among the land records as required by law and shall be indexed in the grantor index under the decedent's name. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-1102.

§ 20-1104. Distribution; effect.

(a) *Title of distributees.* — Proof that a distributee has received an instrument or deed of distribution of assets in kind from the personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all interested persons, except that

the personal representative shall recover the assets or their value if the distribution was improper in accordance with subsection (b) of this section.

(b) *Improper distribution; liability of distributee.* — A distributee of property improperly distributed who has not disposed of the property shall return the property received to the personal representative unless the distribution can no longer be questioned because of adjudication or limitations. If a distributee has disposed of any property improperly distributed, such distributee shall be liable to the personal representative for the value of the property on the date of distribution or the date of disposition, whichever is lower, unless the distribution can no longer be questioned because of adjudication or limitations.

(c) *Purchasers from distributees protected.* — If property distributed in kind or a security interest therein is acquired for value by a purchaser from, or lender to, a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from, or lender to, a transferee from such distributee, the purchaser or lender takes good title free of any claims or rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from, or lender to, a distributee (or a distributee's transferee) even when the distributee, who, as personal representative, has executed such deed of distribution. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a state documentary fee is noted shall be prima facie evidence that such transfer was made for value. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(nnn), 42 DCR 63.)

Effect of amendments. — D.C. Law 10-241 rewrote (c).

Legislative history of Law 3-72. — See note to § 20-1102.

Legislative history of Law 10-241. — See note to § 20-1102.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-1102.

§ 20-1105. Petition for purpose of distribution.

When two or more heirs or legatees are entitled to distribution of undivided interests in any property of the estate, the personal representative or one or more of the heirs or legatees may petition the Court, prior to the closing of the estate, to make partition. After notice to the heirs or legatees interested in the property being partitioned, the Court may partition the property, in accordance with the provisions of sections 16-2901 through 16-2925. The Court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-1102.

§ 20-1106. Distribution to a minor.

(a) If a personal representative is required to distribute assets of an estate to a minor, and if the will contains a direction or grants discretion to the personal representative with regard to the manner of making such a distribution, then the personal representative shall make distribution in accordance with that direction or discretion without the need for any order of the Court.

(b) If a personal representative is required to distribute assets of an estate to a minor, and if there is no will or if the will does not give any direction or discretion to the personal representative with regard to such a distribution, then the personal representative may make such distribution as follows:

(1) without the need for any order of the Court, in the following order of priority:

(A) to the guardian of the minor if the guardian has filed with the Court a copy of the guardian's appointment as guardian and an order authorizing such guardian to receive such distribution authenticated pursuant to 28 U.S.C. § 1738; or

(B) to the custodian selected or approved by the personal representative for the minor under the Uniform Gifts (or Transfers) to Minors Act of any jurisdiction, subject to the limits, if any, under such applicable act on the property which may be received and held by such custodian; or

(2) in any other manner approved by the Court.

(c) When a personal representative distributes assets in accordance with this section, the personal representative shall obtain a voucher, signed by the distributee, indicating receipt of the property distributed. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 12, 1986, D.C. Law 6-87, § 3(b), 33 DCR 278; Mar. 21, 1995, D.C. Law 10-241, § 3(ooo), 42 DCR 63.)

Section references. — This section is referred to in § 21-305.

Effect of amendments. — D.C. Law 10-241 rewrote (a) and (b).

Legislative history of Law 3-72. — See note to § 20-1102.

Legislative history of Law 6-87. — Law 6-87, the "District of Columbia Uniform Transfers to Minors Act," was introduced in Council and assigned Bill No. 6-58, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on November 19, 1985, and December 3, 1985, respectively. Signed by the Mayor on December 30, 1985, it was assigned Act No. 6-115 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — See note to § 20-1102.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-1102.

§ 20-1107. Distribution to fiduciary for nonresident person under legal disability other than minority.

If a fiduciary has been appointed for a nonresident person under a legal disability other than minority and if such fiduciary has filed copies of such appointment and an order authorizing such fiduciary to receive such distribution authenticated pursuant to 28 U.S.C. sec. 1738, the personal representa-

§ 20-1107 PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES

tive may distribute the disabled person's share of an estate to such fiduciary.
(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See
note to § 20-1102.

CHAPTER 13. CLOSING THE ESTATE.

Sec.

20-1301. Termination of appointment.

20-1302. Liability of heir or legatee to creditor.

20-1303. Limitations.

Sec.

20-1304. Subsequent administration.

20-1305. Confirmatory acts.

§ 20-1301. Termination of appointment.

(a) *Supervised administration.* — The approval of the final account shall automatically close the estate, and if the final account so requests and the Court approves, shall terminate the appointment of the personal representative. If the appointment is not terminated by the final account, a supervised personal representative may later petition the Court for an order terminating the appointment. The personal representative shall mail or deliver notice of such petition to all residuary legatees, if the decedent died testate, or heirs, if the decedent died intestate, and to any creditors who have presented their claims but not been paid in full. The Court may hold a hearing on the petition if any person receiving notice files, within 20 days of the mailing of such notice, a written request for a hearing with the Court. After a hearing or, if no hearing is requested, after the expiration of the 20 days, the Court may enter an order terminating the appointment of the personal representative.

(b) *Unsupervised administration; closing the estate.* — Unless otherwise provided by an order of the Court for good cause shown in a particular case, an estate administered in an unsupervised administration shall be closed in one of 2 ways: (A) by the personal representative's filing with the Court a Certificate of Completion as described in section 20-735, and the appointment of the personal representative shall thereby be terminated if so elected by the personal representative in the Certificate of Completion; or (B) if no Certificate of Completion is filed, then by the termination of the appointment of the personal representative as provided in subsection (c) of this section.

(c) *Unsupervised administration; automatic termination of appointment.* — If no Certificate of Completion is filed by a personal representative in an unsupervised administration, then the appointment of the personal representative shall terminate automatically on the date which is 3 years after the appointment of the personal representative, or on the later expiration of any extension of the appointment granted by the Court. Specifically, the Court shall extend the appointment for an additional 12 months upon the written request of the personal representative; there shall be no limit on the number of extensions granted.

(d) Neither the closing of the estate nor the termination of the personal representative's appointment shall prohibit the personal representative from thereafter performing whatever final administrative actions may be necessary to complete the affairs of the estate. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ppp), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(l), 44 DCR 1271.)

Section references. — This section is referred to in §§ 20-405, 20-732, and 20-1304.

Effect of amendments. — D.C. Law 10-241 rewrote this section.

§ 20-1302 PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES

D.C. Law 11-255 inserted the first occurrence of "of Completion" in (b).

Emergency act amendments. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and

December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Application of Law 10-241. — Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Cited in *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

§ 20-1302. Liability of heir or legatee to creditor.

After an estate has been closed, a claim not barred may be brought against one or more of the persons to whom property has been distributed. An heir or legatee shall not be liable to claimants for any amount in excess of the value of the property distributed to such heir or legatee, valued at the time of distribution or the time of filing suit, whichever is lower. An heir or legatee shall have a right of contribution against other heirs or legatees and, as between them, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied before distribution. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section references. — This section is referred to in §§ 20-901 and 20-1303.

Legislative history of Law 3-72. — See note to § 20-1301.

§ 20-1303. Limitations.

(a) *Proceedings against personal representative.* — Unless otherwise barred, any claim of personal liability against a personal representative, except for fraud, and except as provided in section 20-736, shall be barred one year from the date of distribution of all the assets and satisfaction of all known claims against the estate. Unless shown by the personal representative to be earlier, the date of such distribution and satisfaction in an unsupervised administration shall be deemed to be the date of the filing of the Certificate of Completion or, if none, 3 months after the termination of the appointment of the personal representative.

(b)(1) *Claims against heirs and legatees.* — Except as otherwise provided in section 20-1302, the right of any person seeking to recover improperly distributed property or its value from any person to whom property has been

distributed shall be barred one year from the date of distribution of all the assets of the estate and satisfaction of all known claims against the estate.

(2) Where an action or proceeding is commenced against the personal representative within the time prescribed in subsection (a) of this section, the right of the personal representative to seek recovery pursuant to paragraph (1) of this subsection shall not be barred earlier than 3 months following the commencement of the action or proceeding.

(3) Nothing in this subsection shall bar the recovery of property or its value that was received as the result of the distributee's participation in a fraudulent distribution. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(qqq), 42 DCR 63.)

Section references. — This section is referred to in § 20-901.

Effect of amendments. — D.C. Law 10-241 inserted "and except as provided in section 20-736" in the first sentence and added the last sentence in (a).

Legislative history of Law 3-72. — See note to § 20-1301.

Legislative history of Law 10-241. — See note to § 20-1301.

Application of Law 10-241. — See Application of Law 10-241 and Emergency act amendment notes to § 20-1301.

§ 20-1304. Subsequent administration.

If property is discovered after an estate has been closed and the appointment of the personal representative has been terminated pursuant to section 20-1301, the Court, upon petition of any interested person and upon such notice as it may direct, may appoint the same or a successor personal representative and make any other appropriate order. Any further proceedings shall be conducted pursuant to the applicable provisions of this title but no claim previously barred may be asserted in the subsequent administration. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-1301.

§ 20-1305. Confirmatory acts.

Nothing in this title shall be deemed to affect the authority of a personal representative to perform ministerial or confirmatory acts after an estate is closed or the appointment of the personal representative is terminated. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-1301.

TITLE 21. FIDUCIARY RELATIONS AND THE MENTALLY ILL.

Chapter

1. Guardianship of Infants..... §§ 21-101 to 21-182.
3. Transfers to Minors; Uniform Law..... §§ 21-301 to 21-324.
5. Hospitalization of the Mentally Ill..... §§ 21-501 to 21-592.
7. Property of Mentally Ill Persons..... [Repealed].
9. Mentally Ill Persons Found in Certain Federal Reservations..... §§ 21-901 to 21-909.
11. Commitment and Maintenance of Substantially Retarded Persons..... §§ 21-1101 to 21-1123.
12. Use of Trained Employees to Administer Medication to Persons with Mental Retardation or other Disabilities..... §§ 21-1201 to 21-1205.
13. Alcoholics and Drug Addicts..... [Repealed].
15. Conservators..... [Repealed].
17. General Fiduciary Relations..... §§ 21-1701 to 21-1721.
18. Charitable and Split-Interest Trusts..... § 21-1801.
19. Estates of Absentees and Absconders..... [Repealed].
20. Guardianship, Protective Proceedings, and Durable Power of Attorney..... §§ 21-2001 to 21-2098.
22. Health-Care Decisions..... §§ 21-2201 to 21-2213.

CHAPTER 1. GUARDIANSHIP OF INFANTS.

Subchapter I. Appointment of Guardian; Bond.

Sec.

- 21-101. Natural guardians of the person.
- 21-102. Testamentary guardians of the person.
- 21-103. Appointment of guardians of the person by court; limitation of number of wards.
- 21-104. Termination of guardianship of the person.
- 21-105. Appointment by deed or will for child inheriting from parent.
- 21-106. Guardian of estate.
- 21-107. Preferences in appointment of guardian of estate.
- 21-108. Selection of guardian by infant.
- 21-109. Spouse as guardian of estate.
- 21-110. Service on nonresident guardian; failure to give power of attorney.
- 21-111. Ancillary guardian of estate of nonresident infant.
- 21-112. Suits by ancillary guardian.
- 21-113. Enjoining spouse, parent, or testamentary guardian from interfering with minor's estate.
- 21-114. Bond from parents of child entitled to property.

Sec.

- 21-115. Bond of guardian of estate.
- 21-116. One bond for several wards.
- 21-117. Additional bond.
- 21-118. Counter security; petition by surety.
- 21-119. Allowances made before bond given.
- 21-120. Settlement of actions involving minor children; appointment of guardian of estate.

Subchapter II. Property of Infants.

- 21-141. Possession of property.
- 21-142. Inventory.
- 21-143. Duties; accounts; maintenance and education; sales; compensation.
- 21-144. Property subject to liens.
- 21-145. Property subject to executory contract.
- 21-146. Contract for sale by adult in behalf of himself and infant.
- 21-147. Sale of infant's principal for maintenance or education.
- 21-148. Sale or exchange of real estate; proceedings.
- 21-149. Parties.
- 21-150. Proof.
- 21-151. Decree of sale; costs.
- 21-152. Terms of sale; lien.

Sec.

- 21-153. Exchanges; appointment of trustees.
- 21-154. Ratification of sales by court.
- 21-155. Sale or exchange of particular estate or remainder; application of income.
- 21-156. Lease of infant's estate.
- 21-157. Mortgage of infant's estate.

Sec.

- 21-158. Final account.

Subchapter III. Indigent Boys.

- 21-181. Enlistment of indigent minor children.
- 21-182. Preparation of guardianship papers.

Subchapter I. Appointment of Guardian; Bond.

§ 21-101. Natural guardians of the person.

(a) The father and mother are the natural guardians of the person of their minor children. When either dies or is incapable of acting, the natural guardianship of the person devolves upon the other.

(b) This section does not affect the power of a court of competent jurisdiction to appoint another person guardian of the children when it appears to the court that the welfare of the children requires it. (Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1; 1973 Ed., § 21-101.)

Cross references. — As to appointment of guardian for infant owners of buildings which are sought to be condemned, see § 5-709.

As to adoption, see §§ 16-301 to 16-315.

As to ancillary guardian for nonresident infants and persons non compos mentis, see §§ 21-111 and 21-112.

As to management and control of estate, see § 21-143.

As to provisions concerning substantially retarded persons, including inquests, commitments and discharges, see §§ 21-1101 to 21-1119 and 32-803.

As to guardianship, protective proceedings, and durable power of attorney, see § 21-2001 et seq.

As to authority of trust companies to act as guardians, see §§ 26-409 to 26-412, 26-416, 26-433 and 26-434.

As to guardian ad litem in proceedings to sell real estate held by tenant for life with contingent limitation, see § 45-1002.

Section references. — This section is referred to in § 21-106.

Age of majority. — Section 2 of the Act of July 22, 1976, D.C. Law 1-75, provided: "Notwithstanding any rule of common or other law to the contrary in effect on the effective date of this act, the age of majority in the District of Columbia shall be eighteen years of age, except that this act shall not affect any common law or statutory right to child support."

Applicability. — Subsection (a) deals with guardianship and financial matters, and not child custody in the domestic relations area of

the law. *Moorehead v. Moorehead*, 118 WLR 637 (Super. Ct. 1990).

Presumptions. — The fundamental presumption is that children and their natural parents should remain together. *In re D.G.*, App. D.C., 583 A.2d 160 (1990).

Rebuttable presumption in favor of surviving parent. — This section creates a strong presumption that, upon the death of one parent, the surviving parent will have custody of any minor children. Although the presumption is rebuttable, it can be overcome only by clear and convincing evidence of abandonment, unfitness, or other circumstances which render the parent's custody detrimental to the best interest of the child. *Shelton v. Bradley*, App. D.C., 526 A.2d 579 (1987).

No custody order is ever really permanent. — Until the child reaches majority, a custody order is always subject to reconsideration in light of changed circumstances. *Shelton v. Bradley*, App. D.C., 526 A.2d 579 (1987).

Medical treatment. — Courts may authorize blood transfusions for infant minors over the religious objections of their parents who are Jehovah's Witnesses. *In re B.B.H.*, 111 WLR 1929 (Super. Ct. 1988).

Cited in *In re S.G.*, 116 WLR 1149 (Super. Ct. 1988); *In re J.L.N.*, App. D.C., 557 A.2d 1313 (1989); *In re H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, — U.S. —, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994); *S.S. v. D.M.*, App. D.C., 597 A.2d 870 (1991); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995); *Ysla v. Lopez*, App. D.C., 684 A.2d 775 (1996).

§ 21-102. Testamentary guardians of the person.

When one parent is dead, the other, whether of full age or not, may, by last will and testament, appoint a guardian of the person to have the care, custody, and tuition of his infant child, other than a married infant; and if the person so appointed refuses the trust, the Probate Court may appoint another person in his place. (Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1; 1973 Ed., § 21-102; Oct. 1, 1976, D.C. Law 1-87, § 27, 23 DCR 2544.)

Cross references. — As to report of adult abuse or neglect, see § 6-2503.

As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 21-106.

Legislative history of Law 1-87. — Law 1-87, the “Anti-Sex Discriminatory Language

Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

§ 21-103. Appointment of guardians of the person by court; limitation of number of wards.

(a) When an infant has neither a natural nor testamentary guardian, a guardian of the person may be appointed by the Probate Court in its own discretion or on the application of a next friend of the infant.

(b) Only trust companies may act as guardian of the person for more than five infants at one time, unless the infants are members of one family. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; 1973 Ed., § 21-103.)

Cross references. — As to report of adult abuse or neglect, see § 6-2503.

As to jurisdiction, pleading, and practice in Probate Court, see §§ 11-921 and 16-3101 to 16-3112.

As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 21-106.

§ 21-104. Termination of guardianship of the person.

A natural guardianship or an appointive guardianship of the person of an infant ceases when said infant becomes 18 years of age or marries. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; 1973 Ed., § 21-104; July 22, 1976, D.C. Law 1-75, § 4(d), 23 DCR 1181; Apr. 7, 1977, D.C. Law 1-107, title I, § 115, 23 DCR 8737.)

Section references. — This section is referred to in § 21-106.

Legislative history of Law 1-75. — Law 1-75, the “District of Columbia Age of Majority Act,” was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-107. — Law 1-107, the “Marriage and Divorce Act,” was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976, and September 15, 1976, and second readings on November 22, 1976, and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

§ 21-105. Appointment by deed or will for child inheriting from parent.

(a) In case of the death of either parent from whom his or her minor children inherit or take by devise or bequest, the parent may by deed or last will and testament appoint a guardian of the property of the children, subject to the approval of the proper court of the District of Columbia.

(b) This section does not limit or affect the power of a court of competent jurisdiction to appoint another person guardian of the children when it appears to the court that the welfare of the children requires it. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; 1973 Ed., § 21-105.)

Cross references. — As to age of majority, see note following § 21-101. **Cited in** *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-106. Guardian of estate.

(a) Subject to sections 21-101 to 21-104, when land descends or is devised to an infant under 18 years of age, or the infant is entitled to a distributive share of the personal estate of an intestate or to a legacy or bequest under a last will, or acquires real or personal property by gift or purchase, the Probate Court may appoint a guardian of the infant's estate; and if there is a guardian of the person of the infant the guardian of the estate so appointed may be the same or a different person.

(b) The appointment may be made at any time after the probate of the will or the grant of administration when the infant is entitled as a devisee, legatee, or next of kin.

(c) Only trust companies may act as guardian of the estate of more than five infants at one time, unless the infants are entitled to shares of the same estate. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; 1973 Ed., § 21-106; July 22, 1976, D.C. Law 1-75, § 4(e), 23 DCR 1181.)

Legislative history of Law 1-75. — See note to § 21-104.

§ 21-107. Preferences in appointment of guardian of estate.

In appointing a guardian of the estate of an infant, unless said infant be over 14 years of age as hereinafter directed in section 21-108, the court shall give preference to —

(1) the parents, or either of them, if living; or

(2) the spouse if the infant is married to a person 18 years of age or older —

when in the judgment of the court the parent or spouse is a suitable person to have the management of the infant's estate. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; 1973 Ed., § 21-107; Oct. 1, 1976, D.C. Law 1-87, § 28, 23 DCR 2544.)

Legislative history of Law 1-87. — See note to § 21-102.

Cited in *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-108. Selection of guardian by infant.

(a) When a guardian, either of the person or the estate, of an infant is appointed, the infant shall, if practicable, be brought before the court, and, if over 14 years of age, shall be entitled to select and nominate his or her guardian.

(b) When a guardian has been appointed before the infant has attained the age of 14 years, the infant, upon arriving at that age, may select a new guardian, notwithstanding the appointment before made.

(c) The court shall pass upon the character and competency of the guardian selected by the infant, and the guardian shall be:

(1) required to give bond as in other cases;

(2) subject to the control of the court; and

(3) under the same obligations and discharge the same duties — as if selected by the court.

(d) When, after a guardian of the estate has been appointed, the infant selects a new guardian upon arriving at the age of 14 years, and the new selection is approved by the court, and the person selected is duly appointed and qualified, the guardian previously appointed shall settle his final account and turn over his ward's estate to the newly appointed guardian. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; 1973 Ed., § 21-108.)

Cross references. — As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 21-107.

§ 21-109. Spouse as guardian of estate.

When an infant to whom a guardian of his or her estate has been appointed marries, he or she may select his or her spouse as the guardian of his or her estate, with the approval of the court; and after he is duly appointed and qualified by giving bond, as is required in other cases, the powers of the guardian previously appointed shall cease, and he shall settle his final account and turn over his ward's estate to his or her spouse, according to the order and directions of the court. (Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1; 1973 Ed., § 21-109; Oct. 1, 1976, D.C. Law 1-87, § 29(a), 23 DCR 2544.)

Cross references. — As to age of majority, see note following § 21-101.

Legislative history of Law 1-87. — See note to § 21-102.

§ 21-110. Service on nonresident guardian; failure to give power of attorney.

Before original or ancillary letters of guardianship are issued, the person designated, if a nonresident of the District of Columbia, shall file in the office of the Register of Wills an irrevocable power of attorney designating the Register of Wills and his successors in office as the person upon whom all notices and process issued by a competent court in the District may be served,

with like effect as personal service, in relation to all suits, matters, causes, or things affecting or pertaining to the estate in which the letters are to be issued. The Register of Wills shall forthwith forward by registered or certified mail to the address of the guardian, which shall be stated in the power of attorney, all notices or process served upon the Register under this section.

If the person fails to file the power of attorney within 10 days after the entry of the order of appointment, the order shall stand revoked, and he shall forfeit all rights to the office. (Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1; 1973 Ed., § 21-110.)

Cross references. — As to bonds required of trust companies as fiduciaries, see §§ 26-433 and 26-434.

§ 21-111. Ancillary guardian of estate of nonresident infant.

When an infant residing outside the District of Columbia is entitled to property or to maintain an action in the District of Columbia, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the State or territory where the infant resides, or a person at the request of the guardian or committee, may petition the court for ancillary letters as guardian or committee. The petition shall be under oath, accompanied by certified copies of as much of the record and proceedings as shows the appointment of the guardian or committee and that he has given a sufficient bond to account for all property and money that may come into his hands by virtue of the authority conferred. The court may thereupon issue to the guardian or committee ancillary letters as such guardian or committee, without citation, or may cite such persons as it believes proper to show cause why the application should be refused; and the court shall require the security required by law in like cases from a resident guardian or committee. (Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1; 1973 Ed., § 21-111.)

Cross references. — As to age of majority, see note following § 21-101.

§ 21-112. Suits by ancillary guardian.

(a) Upon the granting of ancillary letters, the guardian may institute and prosecute to judgment any action in the courts of the District of Columbia, take possession of all property of his ward, and collect and receive all moneys belonging and due to him therein, give full receipt and acquittances for debts, and release all claims, liens, and mortgages belonging to the ward, on property in the District of Columbia, in the same manner as if his authority had been originally conferred by the Probate Court.

(b) The guardian shall give security for the costs which may accrue in an action brought by him, in the same manner as other nonresidents bringing suit in the courts of the District. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1;

July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(a)(1); 1973 Ed., § 21-112.)

Cited in *Carrington v. Metropolitan Life Ins. Co.*, 111 WLR 53 (Super. Ct. 1983).

§ 21-113. Enjoining spouse, parent, or testamentary guardian from interfering with minor's estate.

On application of a friend of an infant entitled to real or personal estate, or in the exercise of its own discretion, the court may enjoin a parent or spouse or testamentary guardian from interfering with the infant's estate without being appointed and giving bond as guardian of the estate. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; 1973 Ed., § 21-113; Oct. 1, 1976, D.C. Law 1-87, § 30(a), 23 DCR 2544.)

Cross references. — As to age of majority, see note following § 21-101.

Legislative history of Law 1-87. — See note to § 21-102.

§ 21-114. Bond from parents of child entitled to property.

When an infant whose father or mother is living becomes entitled to property, the Probate Court may require the father or mother, as guardian, to give bond and security to account for the property, and on his or her failure or refusal so to do may appoint another person guardian, who shall give bond as in other cases. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; 1973 Ed., § 21-114.)

Cross references. — As to undertaking in lieu of fiduciary's bond, see § 16-601.

As to age of majority, see note following § 21-101.

Cited in *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-115. Bond of guardian of estate.

A guardian appointed by the court, other than a corporation authorized to act as guardian, and a testamentary guardian, unless otherwise directed by the will making the appointment, before entering upon or taking possession of or interfering with the estate of the infant, shall execute a bond in such penalty and with such surety as the court approves, to be recorded and to be liable to be sued upon for the use of a person interested, with the condition that if he, as guardian, faithfully accounts to the court, as required by law, for the management of the property and estate of the infant under his care, and delivers up the property agreeably to the order of the court or the directions of law, and in all respects performs the duty of guardian according to law, then the obligation shall cease; it shall otherwise remain in full force. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(a) (2); 1973 Ed., § 21-115.)

Cross references. — As to undertaking in lieu of fiduciary's bond, see § 16-601.

Cited in *In re J.L.N.*, App. D.C., 557 A.2d 1313 (1989).

§ 21-116. One bond for several wards.

When a person is guardian to a number of persons entitled to shares of the same estate the court may accept one bond instead of separate bonds for each ward, and the bond shall be liable to be sued upon for the use of all or any of the wards as fully as separate bonds might be. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; 1973 Ed., § 21-116.)

§ 21-117. Additional bond.

The court may at any time require a guardian to give bond or additional bond, when the interests of the infant require it, and on his failure or refusal so to do, may revoke his appointment and appoint another guardian in his place, and require the estate of the infant to be forthwith delivered to the newly appointed guardian, and may direct the latter to bring suit upon the bond of his predecessor. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; 1973 Ed., § 21-117.)

§ 21-118. Counter security; petition by surety.

If a surety of a guardian by petition sets forth that he apprehends himself to be in danger of loss in consequence of his suretyship, and prays the court to be relieved, the court, after summoning the guardian to answer the petition, may require him to give counter security to indemnify his original surety or to deliver his ward's estate into the hands of the surety or of another person. In either case, the court shall require sufficient security for the proper management and application of the estate to be given by the person into whose hands the estate is delivered, and make such other order as seems just. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; 1973 Ed., § 21-118.)

§ 21-119. Allowances made before bond given.

An allowance made to a guardian for the clothing, support, maintenance, education or other expenses incurred for the ward or his estate, before the guardian gives bond or is appointed, has the same effect in law as if made subsequently to the appointment of the guardian and his giving bond. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1; 1973 Ed., § 21-119.)

§ 21-120. Settlement of actions involving minor children; appointment of guardian of estate.

(a) A person entitled to maintain or defend an action on behalf of a minor child, including an action relating to real estate, is competent to settle an action so brought and, upon settlement thereof or upon satisfaction of a judgment obtained therein, is competent to give a full acquittance and release of all liability in connection with the action, but such a settlement is not valid unless approved by a judge of the court in which the action is pending.

(b) A person may not receive money or other property on behalf of a minor in settlement of an action brought on behalf of or against the minor or in

satisfaction of a judgment in the action, where, after deduction of fees, costs and all other expenses incident to the matter, the net value of the money and property due the minor exceeds \$3,000, before he is appointed by a court of competent jurisdiction as guardian of the estate of the minor to receive the money or property, and qualifies as such. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1; 1973 Ed., § 21-120.)

Cross references. — As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 21-307.

Effect of Uniform Transfers to Minors Act. — By adopting the Uniform Transfers to Minors Act, including the accompanying comments of the Commissioners, the legislature increased the nominal amount which does not require a judicially supervised guardianship to \$10,000. It has imposed, nonetheless, specific fiduciary standards on the individual receiving the funds from a tort obligor such as those imposed by §§ 21-312, 21-314, 21-317 and 21-319. *K.A.E. v. Manuel*, 115 WLR 2589 (Super. Ct. 1987).

Errors or omissions of representatives.

— A minor, who has no control over the outcome

of the proceeding, and who is not responsible for the actions (or inactions) that triggered the trial court's orders, should not suffer because of the default of the next friend. *Godfrey v. Washington*, App. D.C., 653 A.2d 371 (1995).

In the appropriate case, the trial court should rule so as to preserve the rights of a minor who would otherwise suffer a significant loss due entirely to the default of some representative who was supposed to be, but was not, acting in the minor's best interest. *Godfrey v. Washington*, App. D.C., 653 A.2d 371 (1995).

Cited in *Friends For All Children, Inc. v. Lockheed Aircraft Corp.*, 567 F. Supp. 790 (D.D.C. 1983); *Swann v. Waldman*, App. D.C., 465 A.2d 844 (1983).

Subchapter II. Property of Infants.

§ 21-141. Possession of property.

On the execution of his bond, a guardian is entitled to an order of the court directing the real and personal estate of the ward to be delivered into his possession, and all legacies and distributive shares to which the ward is entitled to be paid or delivered to him when they are properly payable or distributable according to law. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1; 1973 Ed., § 21-141.)

Cross references. — As to age of majority, see note following § 21-101.

Transfer not improper. — Requiring the adult children of a ward to transfer to the conservators an alleged testamentary docu-

ment entrusted to the children by the ward was not improper on the ground that the will was not a part of the ward's estate in his lifetime. *Price v. Williams*, 393 F.2d 348 (D.C. Cir. 1968).

§ 21-142. Inventory.

Within three months after the execution and approval of his bond, a guardian shall return to the court, under oath, an inventory of the real and personal estate of his ward and of the probable annual income thereof, and the court may direct the estate to be appraised and the annual income thereof to be ascertained by two competent persons, to be appointed by the court, who shall report their appraisal and finding under oath. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1; 1973 Ed., § 21-142.)

Cross references. — As to age of majority, see note following § 21-101.

As to property of infants, see §§ 21-147 to 21-158.

As to separate estate of infant married women, see §§ 19-107a and 30-201.

§ 21-143. Duties; accounts; maintenance and education; sales; compensation.

A guardian shall manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions, and he is not answerable for any loss or decrease sustained without his fault. The court shall determine the amounts to be expended annually in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and if it deems it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell it or part thereof, under the court's order, as provided by this subchapter; but a guardian may not sell any property of his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services rendered by the guardian not exceeding a commission of five per centum of the amounts collected, if and when disbursed. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1; 1973 Ed., § 21-143.)

Cross references. — As to age of majority, see note following § 21-101.

As to criminal liability for failure to provide and care for minor children, see §§ 22-901 and 22-902.

As to effect of endorsement of negotiable instrument in passing title, see §§ 28:3-201 et seq.

As to liability for necessities, see § 28-3505.

As to liability of stockholder of business corporation, see § 29-220.

As to suits to annul marriage, see § 30-104.

As to consent of parents or guardian to marriage of infant, see § 30-111.

As to capacity to contract for life insurance, see § 35-430.

As to child labor and work permits, see §§ 36-501 et seq.

As to minimum wages, see §§ 36-220 et seq.

As to rights under real estate leases, see §§ 45-1425 to 45-1428.

As to redemption from tax sales within 1 year after majority, see § 47-1304.

As to duty to file schedule of personal property for taxation and distraint of property for nonpayment, see § 47-1601.

Reasonable compensation. — The figure of 5% is permissible in determining reasonable compensation to guardians ad litem. *Mitchell v. Ensor*, 412 F.2d 155 (D.C. Cir. 1969).

Cited in *Lynn v. Lynn*, App. D.C., 617 A.2d 963 (1992).

§ 21-144. Property subject to liens.

When an infant is entitled to real or personal estate in the District of Columbia which is liable to a mortgage, trust, or lien, or is in any way charged with the payment of money, the court may decree in the case as if the infant were of full age. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1; 1973 Ed., § 21-144.)

Cross references. — As to age of majority, see note following § 21-101.

As to rights of infants under mortgages, see §§ 45-708 and 45-709.

As to rights and duties of persons non compos mentis under real estate mortgage, see § 45-720.

§ 21-145. Property subject to executory contract.

When an infant is:

(1) entitled to real or personal estate in the District of Columbia bound by executory contract entered into by the person from whom the infant derived title; or

(2) claims a right or interest in property under such a contract—the court may decree the execution of the contract or enter a just and proper decree, as if the parties were of full age. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1; 1973 Ed., § 21-145.)

Cross references. — As to age of majority, see note following § 21-101.

§ 21-146. Contract for sale by adult in behalf of himself and infant.

When a contract is made for the sale of real estate by persons interested therein jointly or in common with an infant, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of the circumstances, considers to be for the interest and advantage both of the infant and of the other persons interested therein to be confirmed, the court may confirm the contract and order a deed to be executed according to it. Sales and deeds made in pursuance of the order are sufficient in law to transfer the estate and interest of the infant in the real estate. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1; 1973 Ed., § 21-146.)

Cross references. — As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 16-2901.

§ 21-147. Sale of infant's principal for maintenance or education.

When it appears, upon the verified petition of a guardian, or in a case of his refusal to act, a next friend of an infant, and the appearance and answer of the infant by guardian to be appointed by the court, and proof by deposition of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of a part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the Probate Court may decree the sale on terms which to it seem proper. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1; 1973 Ed., § 21-147.)

Cross references. — As to jurisdictional pleading and practice in Probate Court, see §§ 11-921 and 16-3101 to 16-3112.

As to age of majority, see note following § 21-101.

As to ancillary guardian for nonresident infants and persons mentally ill, see §§ 21-111 and 21-112.

As to rights, liabilities, and property of infants, see § 21-143.

As to property of infants and persons mentally ill, see §§ 21-144, 21-145, and 21-2051 to 21-2077.

§ 21-148. Sale or exchange of real estate; proceedings.

When a guardian or, in case of his refusal to act, a next friend, deems that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property or securities, or by an exchange of the property for other property, he may file a verified petition in the court, setting forth all the estate of the ward, real and personal, and all the facts which, in his opinion, tend to show whether the ward's interest will be promoted by the sale or exchange. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1; 1973 Ed., § 21-148.)

Cross references. — As to age of majority, see note following § 21-101.

Cited in *Lynn v. Lynn*, App. D.C., 617 A.2d 963 (1992).

Section references. — This section is referred to in §§ 21-149, 21-150, 21-151, and 21-155.

§ 21-149. Parties.

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant in the proceeding provided by section 21-148; and the court shall appoint a fit and disinterested person to be guardian ad litem for the infant, who shall answer the petition under oath. The infant also, if above the age of 14 years, shall answer the petition in proper person, under oath. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1; 1973 Ed., § 21-149.)

Cross references. — As to age of majority, see note following § 21-101.

Section references. — This section is referred to in § 21-155.

§ 21-150. Proof.

Every fact material to determine the propriety of a sale or exchange shall be clearly proved, in a proceeding brought pursuant to section 21-148, by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1; 1973 Ed., § 21-150.)

Section references. — This section is referred to in § 21-155.

§ 21-151. Decree of sale; costs.

When, in a proceeding brought pursuant to section 21-148, the court is satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, the sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1; 1973 Ed., § 21-151.)

Cross references. — As to age of majority, see note following § 21-101.

Section references. — This section is referred to in §§ 21-152, 21-153, and 21-155.

§ 21-152. Terms of sale; lien.

A sale pursuant to a decree issued pursuant to section 21-151 may be made upon such terms as to cash and credit as the court directs, and a lien shall be retained on the property sold for the purchase money. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1; 1973 Ed., § 21-152.)

Section references. — This section is referred to in § 21-155.

§ 21-153. Exchanges; appointment of trustees.

In decreeing an exchange of an infant's estate for other property, pursuant to section 21-151, the court need not require equality or sameness in the quantity or character of the estate or interest, and the court may appoint trustees to execute the deeds necessary to carry the exchange into effect. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1; 1973 Ed., § 21-153.)

Section references. — This section is referred to in § 21-155.

§ 21-154. Ratification of sales by court.

A sale of property of an infant is not effectual to pass title to the property sold until it is reported to and ratified by the court. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1; 1973 Ed., § 21-154.)

Cross references. — As to age of majority, see note following § 21-101.

§ 21-155. Sale or exchange of particular estate or remainder; application of income.

Where an infant is entitled to a particular estate, as for life or years, and another person is entitled to an estate in remainder or reversion or by way of executory devise in the same property, or the other person is entitled to the particular estate and the infant is entitled in remainder or reversion or executory devise, the court may decree a sale or exchange as provided by sections 21-148 to 21-153, having reference solely to the interests of the infant, if the other person so interested consents to the sale or exchange and execute the conveyances necessary to carry it into effect. The court shall direct the annual income from the fund or property acquired by the sale or exchange to be applied according to the interests of the respective parties. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1; 1973 Ed., § 21-155.)

Cross references. — As to age of majority, see note following § 21-101.

§ 21-156. Lease of infant's estate.

Where it appears to the court that it will be to the advantage of the infant that his real estate be demised, the court shall decree that it be demised for a term of years not to exceed the minority of the infant, yielding such rents and on such terms and conditions as the court directs. Where the infant is entitled to only a part of the estate, the decree demising the estate shall be made only if all the owners of the other interest assent. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1; 1973 Ed., § 21-156.)

Cross references. — As to age of majority, see note following § 21-101.

§ 21-157. Mortgage of infant's estate.

Where it appears to the court by proof that it would be for the advantage of the infant to raise money by mortgage for his maintenance or to improve his real property or to pay off charges, liens, or incumbrances thereon, the court may, on the application of the guardian or of the infant by next friend, decree a conveyance of the property, by mortgage or deed of trust, to be executed by the guardian, on such terms as to the court seem expedient. This section also applies where the infant holds jointly or in common with other persons of full age or holds a portion of the estate, as a particular estate, for life or years or in remainder or reversion, if the other owners interested, all being of full age, consent to the decree and unite in the mortgage or deed of trust. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1; 1973 Ed., § 21-157.)

Cross references. — As to age of majority, see note following § 21-101.

§ 21-158. Final account.

On arrival of a ward at the age of 18 years the guardian shall exhibit a final account of his trust to the court and shall, agreeably to the court's order, deliver up to the ward all the property of the ward in his hands and if he fails to do so, his bond may be sued upon for the use of the party interested, and he may be attached. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(a) (3); 1973 Ed., § 21-158; July 22, 1976, D.C. Law 1-75, § 4(c), 23 DCR 1181.)

Legislative history of Law 1-75. — See note to § 21-104.

Subchapter III. Indigent Boys.

§ 21-181. Enlistment of indigent minor children.

The Probate Court may appoint guardians to indigent minor children for the purpose of securing their enlistment in the naval or marine service of the United States, as provided by law, free of costs on account of the proceeding.

(Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; 1973 Ed., § 21-181; Oct. 1, 1976, D.C. Law 1-87, § 31(a)(2), (3), 23 DCR 2544.)

Cross references. — As to the age of majority, see note following § 21-101.

Legislative history of Law 1-87. — See note to § 21-102.

§ 21-182. Preparation of guardianship papers.

The Register of Wills shall prepare papers in connection with appointment of guardians to enable indigent minor children to enlist in the United States Navy as provided by law, without making a charge therefor. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; 1973 Ed., § 21-182; Oct. 1, 1976, D.C. Law 1-87, § 31(a)(4), 23 DCR 2544.)

Legislative history of Law 1-87. — See note to § 21-102.

CHAPTER 3. TRANSFERS TO MINORS; UNIFORM LAW.

Sec.

- 21-301. Definitions.
- 21-302. Scope and jurisdiction.
- 21-303. Nomination of custodian.
- 21-304. Transfer by gift or exercise of power of appointment.
- 21-305. Transfer authorized by will or trust.
- 21-306. Other transfers by fiduciary.
- 21-307. Transfer by obligor.
- 21-308. Receipt for custodial property.
- 21-309. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.
- 21-310. Single custodianship.
- 21-311. Validity and effect of transfer.
- 21-312. Care of custodial property.
- 21-313. Powers of custodian.
- 21-314. Use of custodial property.

Sec.

- 21-315. Custodian's expenses; compensation; bond.
- 21-316. Exemption of third person from liability.
- 21-317. Liability to third persons.
- 21-318. Renunciation, resignation, death, or removal of custodian; designation of successor custodian.
- 21-319. Accounting by and determination of liability of custodian.
- 21-320. Termination of custodianship.
- 21-321. Applicability.
- 21-322. Effect of existing custodianships.
- 21-323. Uniformity of application and construction.
- 21-324. Effect of repeal of Uniform Gifts to Minors Act.

Revision of chapter. — D.C. Law 6-87 amended this chapter by substituting present

§§ 21-301 through 21-324 for former §§ 21-301 through 21-311.

§ 21-301. Definitions.

For purposes of this chapter the term:

- (1) "Adult" means an individual who has attained the age of 18 years.
- (2) "Benefit plan" means an employer's plan for the benefit of an employee or a partner.
- (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (5) "Court" means the Superior Court of the District of Columbia.
- (6) "Custodial property" means 1 of the following:
 - (A) Any interest in property transferred to a custodian under this chapter; and
 - (B) The income from and the proceeds of that interest in property.
- (7) "Custodian" means a person so designated under section 21-309 or a successor or substitute custodian designated under section 21-318.
- (8) "District" means the District of Columbia.
- (9) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (10) "Legal representative" means an individual's personal representative or conservator.
- (11) "Member of the minor's family" means the minor's parent, step-parent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(12) "Minor" means an individual who has not reached the age of 18 years.

(13) "Person" means an individual, a corporation, an organization, or other legal entity.

(14) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(15) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession subject to the legislative authority of the United States.

(16) "Transfer" means a transaction that creates custodial property under section 21-309.

(17) "Transferor" means a person who makes a transfer under this act.

(18) "Trust company" means a financial institution, a corporation, or other legal entity authorized to exercise general trust powers. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in § 21-322.

Legislative history of Law 6-87. — Law 6-87, the "District of Columbia Uniform Transfers to Minors Act," was introduced in Council and assigned Bill No. 6-58, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 19, 1985, and December 3, 1985, respectively. Signed by the Mayor on December 30, 1985, it was assigned Act No. 6-115 and trans-

mitted to both Houses of Congress for its review.

References in text. — "This act", referred to in paragraph (17), is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

Cited in K.A.E. v. Manuel, 115 WLR 2589 (Super. Ct. 1987); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 21-302. Scope and jurisdiction.

(a) This chapter applies to a transfer that refers to this act in the designation under section 21-309(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the District or the custodial property is located in the District. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor or the custodian, or despite the removal of custodial property from the District.

(b) A person designated as custodian under this chapter is subject to personal jurisdiction in the District with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in the District if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Apr. 30, 1988, D.C. Law 7-104, § 6(a), 35 DCR 147.)

Section references. — This section is referred to in § 21-321.

Legislative history of Law 6-87. — See note to § 21-301.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

References in text. — “This act,” referred to in the first sentence of subsection (a) of this section, is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

Editor’s notes. — Section 6(a) of D.C. Law 7-104 purported to substitute “company” for “comany” in former subsection (a)(1) apparently without regard to the amendment of the section by D.C. Law 6-87.

§ 21-303. Nomination of custodian.

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: “as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act.” The nomination may name 1 or more persons as substituted custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, the issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 21-309(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 21-309. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 21-309. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in §§ 21-305, 21-307, 21-311, and 21-318.

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-304. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 21-309. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in §§ 21-315, 21-318, and 21-320.

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-305. Transfer authorized by will or trust.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to section 21-309 to a custodian for the benefit of a minor as authorized in the governing will or trust, subject to the authority of the court under section 20-1106.

(b) If the testator or the settlor has nominated a custodian under section 21-303 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or the settlor has not nominated a custodian under section 21-303 or if all persons so nominated die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee shall designate a custodian from among those eligible to serve as custodian for property of that kind under section 21-309(a). (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in §§ 21-307 and 21-320.

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-306. Other transfers by fiduciary.

(a) Subject to subsection (c) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or to a trust company, as custodian, for the benefit of a minor pursuant to section 21-309, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c) of this section, a conservator may make an irrevocable transfer to another adult or to a trust company, as custodian, for the benefit of the minor pursuant to section 21-309.

(c) A transfer under subsection (a) or (b) of this section may be made only if the following occur:

(1) The personal representative, the trustee, or the conservator considers the transfer to be in the best interests of the minor;

(2) The transfer is not prohibited by or inconsistent with the provisions of the applicable will, trust agreement, or other governing instrument; and

(3) The transfer is authorized by the court if it exceeds \$10,000 in value. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in §§ 21-307 and 21-320.

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-307. Transfer by obligor.

(a) Subject to subsection (b) and (c) of this section, a person not subject to section 21-305 or 21-306 and who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 21-309.

(b) If a person having the right to do so under section 21-303 has nominated a custodian under that section to receive the custodial property, then the transfer must be made to that person.

(c) With the exception of section 21-120, if no custodian has been nominated under section 21-303, or if all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, then a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Apr. 30, 1988, D.C. Law 7-104, § 6(b), 35 DCR 147; Feb. 5, 1994, D.C. Law 10-68, § 21, 40 DCR 6311.)

Section references. — This section is referred to in § 21-320.

Legislative history of Law 6-87. — See note to § 21-301.

Legislative history of Law 7-104. — See note to § 21-302.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Editor's notes. — Section 21-120, referred to in subsection (c), does not contain a subsection (c).

Purpose. — By enacting the District of Columbia Uniform Transfers to Minors Act, it was the unequivocal intent of the legislature to provide a method for tort debtors to pay to responsible parties (for the benefit of a minor) nominal sums for which they, the tort debtors, have become obligated. *K.A.E. v. Manuel*, 115 WLR 2589 (Super. Ct. 1987).

Judicially supervised guardianship. — By adopting the Uniform Transfers to Minors Act, including the accompanying comments of the Commissioners, the legislature increased the nominal amount which does not require a judicially supervised guardianship under § 21-120. It has imposed, nonetheless, specific fiduciary standards on the individual receiving the funds from a tort obligor such as those imposed by §§ 21-312, 21-314, 21-317 and 21-319. *K.A.E. v. Manuel*, 115 WLR 2589 (Super. Ct. 1987).

§ 21-308. Receipt for custodial property.

A written acknowledgement of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred under this act. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

References in text. — "This act", referred to at the end of the section, is the District of

Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

§ 21-309. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

(a) Custodial property is created and a transfer is made when:

(1) An uncertificated security is either:

(A) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(B) Delivered with the necessary documents and endorsements for transfer to an adult other than the transferor or to a trust company, as custodian, accompanied by an instrument in substantially the form described in subsection (b) of this section;

(2) A certificated security in registered form is either:

(A) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(B) Delivered, together with any necessary endorsements, to an adult other than the transferor or to a trust company, as custodian, accompanied by an instrument in substantially the form described in subsection (b) of this section;

(3) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act";

(4) The ownership of a life or endowment insurance policy or annuity contract is either:

(A) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(B) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act";

(5) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act";

(6) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act";

(7) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(A) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(B) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(8) An interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a

written instrument in substantially the form set forth in subsection (b) of this section.

(b) An instrument in the following form satisfies the requirements of paragraphs (1)(B), (2)(B), and (8) of subsection (a) of this section:

**TRANSFER UNDER THE DISTRICT OF COLUMBIA
UNIFORM TRANSFERS TO MINORS ACT**

I, _____ [name of transferor or name of representative capacity if a fiduciary] hereby transfer to _____ [name of custodian], as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act, the following: [insert a description of the custodian property sufficient to identify it].

Dated: _____

[Signature] _____ [name of custodian] acknowledges receipt of the property described above as a custodian for the minor named above under the District of Columbia Uniform Transfers to Minors Act.

Dated: _____

[Signature of Custodian]

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in §§ 21-301 to 21-307, 21-311, and 21-318.

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-310. Single custodianship.

A transfer shall be made only for 1 minor, and only 1 person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-311. Validity and effect of transfer.

(a) The validity of a transfer made in a manner prescribed in this act is not affected by the following:

(1) Failure of the transferor to comply with section 21-309(c) concerning possession and control;

(2) Designation of an ineligible custodian, except designation of the transferor in the case of property, over which the transferor is ineligible to serve as custodian under section 21-309(a); or

(3) Death or incapacity of a person nominated under section 21-303 or designated under section 21-309 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to section 21-309 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, the powers, the duties, and the authority provided in this chapter, and neither the minor nor the minor's legal representative has a right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(c) By making a transfer, the transferor incorporates in the disposition the provisions of this chapter and grants to the custodian, and to a third person dealing with a person designated custodian, the respective powers, rights, and immunities provided in this chapter. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

References in text. — "This act," referred to in the introductory language of subsection (a) of

this section, is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

§ 21-312. Care of custodial property.

(a) A custodian shall perform the following:

- (1) Take control of custodial property;
- (2) Register or record title to custodial property if appropriate; and
- (3) Collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on the following:

(1) The life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(2) The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is properly identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is properly identified if it is recorded, and custodial property subject to registration is properly identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian

for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act”.

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if the minor has reached the age of 14 years. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in § 21-313.

Cited in K.A.E. v. Manuel, 115 WLR 2589 (Super. Ct. 1987).

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-313. Powers of custodian.

(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of section 21-312. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-314. Use of custodial property.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to the following:

(1) The duty or the ability of the custodian personally or of another person to support the minor; or

(2) Other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or of the minor, if the minor has reached the age of 14 years, the court may order the custodian to deliver or pay to the minor or to expend for the minor's benefit as much of the custodial property as the court considers advisable for the use and the benefit of the minor.

(c) A delivery, a payment, or an expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

Cited in K.A.E. v. Manuel, 115 WLR 2589 (Super. Ct. 1987).

§ 21-315. Custodian's expenses; compensation; bond.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under section 21-304, a custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in section 21-318(f), a custodian need not give a bond. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-316. Exemption of third person from liability.

A third person, in good faith and without a court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge of the third person, shall not be responsible for determining the following:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under this chapter for, any act of the purported custodian;

(3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-317. Liability to third persons.

(a) A claim may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable, if a claim is based on the following:

(1) A contract entered into by a custodian acting in a custodial capacity;

(2) An obligation arising from the ownership or control of custodial property; or

(3) A tort committed during the custodianship.

(b) A custodian is not personally liable in the following circumstances:

(1) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in § 21-319.

Legislative history of Law 6-87. — See note to § 21-301.

Cited in K.A.E. v. Manuel, 115 WLR 2589 (Super. Ct. 1987).

§ 21-318. Renunciation, resignation, death, or removal of custodian; designation of successor custodian.

(a) A person nominated under section 21-303 or designated under section 21-309 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 21-303, then the person who made the nomination may nominate a substitute custodian under section 21-303. Otherwise, the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 21-309(a). The custodian so designated has the rights of the successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section 21-304 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, then the designation of the successor shall not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has reached the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has reached the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (b) of this section, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not reached the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity of the custodian, then the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) of this section or resigns under subsection (c) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the

custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) The transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the property of the minor, or the minor, if the minor has reached the age of 14 years, may petition the court to remove the custodian for cause and to designate a successor custodian other than the transferor under section 21-304 or to require the custodian to give appropriate bond. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in § 21-301, 21-315, and 21-319.

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-319. Accounting by and determination of liability of custodian.

(a) A minor who has reached the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court for the following:

(1) For an accounting by the custodian or the custodian's legal representative; or

(2) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 21-317 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this act or in any other proceeding, may require or permit the custodian or the custodian's legal representative to give an accounting.

(d) If a custodian is removed under section 21-318(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of the instruments required for transfer of the custodial property. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

6-87 which is codified primarily as § 21-301 et seq.

References in text. — "This act," referred to in subsection (c), is the District of Columbia Uniform Transfers to Minors Act, D.C. Law

Cited in K.A.E. v. Manuel, 115 WLR 2589 (Super. Ct. 1987).

§ 21-320. Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor reaches 18 years of age with respect to custodial property transferred under section 21-304 or 21-305;

(2) The minor reaches 18 years of age with respect to custodial property transferred under section 21-306 or 21-307; or

(3) The minor's death. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Feb. 5, 1994, D.C. Law 10-68, § 22, 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-255, § 20(a), 44 DCR 1271.)

Section references. — This section is referred to in § 21-322.

Effect of amendments. — D.C. Law 11-255 made a capitalization change in (3).

Legislative history of Law 6-87. — See note to § 21-301.

Legislative history of Law 10-68. — See note to § 21-307.

Legislative history of Law 11-255. — See note to § 16-324.

§ 21-321. Applicability.

The District of Columbia Uniform Transfers to Minors Act applies to a transfer within the scope of section 21-302 made after the act's effective date if the following occurs:

(1) The transfer purports to have been made under District of Columbia Uniform Gifts to Minors Act; or

(2) The instruments by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "custodian under the Uniform Transfers to Minors Act" of any other state, and the application of the District of Columbia Uniform Transfers to Minors Act is necessary to validate the transfer. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

References in text. — "The act's effective

date," referred to in the introductory language of subsection (a) of this section, is the effective date of D.C. Law 6-87, March 12, 1986.

§ 21-322. Effect of existing custodianships.

(a) Any transfer of custodial property as now defined in this act made before the effective date of the District of Columbia Uniform Transfers to Minors Act is validated notwithstanding that there was no specific authority in the District of Columbia Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This chapter applies to all transfers made before the effective date of the District of Columbia Uniform Transfers to Minors Act in a manner and form prescribed in the District of Columbia Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships existing on the effective date of the District of Columbia Uniform Transfers to Minors Act.

(c) Sections 21-301 and 21-320 with respect to the age of a minor for whom custodial property is held under this act do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after the effective date of the District of Columbia Age of Majority Act (July 22, 1976) and before the effective date of the District of Columbia

Uniform Transfers to Minors Act. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Section references. — This section is referred to in § 21-324.

Legislative history of Law 6-87. — See note to § 21-301.

References in text. — “This act,” referred to near the beginning of subsection (a) of this section, is the District of Columbia Uniform

Transfers to Minors Act, D.C. Law 6-87. “The effective date of the District of Columbia Uniform Transfers to Minors Act”, referred to throughout the section, is the effective date of D.C. Law 6-87, March 12, 1986 which is codified primarily as § 21-301 et seq.

§ 21-323. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

§ 21-324. Effect of repeal of Uniform Gifts to Minors Act.

To the extent that this chapter by virtue of section 21-322(b) does not apply to transfers made in a manner prescribed in the District of Columbia Uniform Gifts to Minors Act or to the powers, duties, and its immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the District of Columbia Uniform Gifts to Minors Act does not affect those transfers or those powers, duties and immunities. (Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Legislative history of Law 6-87. — See note to § 21-301.

CHAPTER 5. HOSPITALIZATION OF THE MENTALLY ILL.

Subchapter I. Definitions; Commission on Mental Health.

Sec.

- 21-501. Definitions.
- 21-501.1. Qualified psychologists.
- 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries.
- 21-503. Examinations and hearings; subpoenas; witnesses; place.

Subchapter II. Voluntary and Nonprotesting Hospitalization.

- 21-511. Voluntary hospitalization.
- 21-512. Release of voluntary patients.
- 21-513. Hospitalization of nonprotesting persons.
- 21-514. Release of patients hospitalized under section 21-513.

Subchapter III. Emergency Hospitalization.

- 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital.
- 21-522. Examination and admission to hospital; notice.
- 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation.
- 21-524. Determination and order of court.
- 21-525. Hearing by court.
- 21-526. Extension of maximum periods of time.
- 21-527. Examination and release of person; notice.
- 21-528. Detention of person pending judicial proceedings.

Subchapter IV. Hospitalization Under Court Order.

- 21-541. Petition to Commission; copy to person affected.
- 21-542. Hearing by Commission; presence and rights of person affected; hearing regarding liability.
- 21-543. Representation by counsel; compensation; recess.
- 21-544. Determinations of Commission; report to court; copy to person affected; right to jury trial.
- 21-545. Hearing and determination by court or jury; order; witnesses; jurors.

Sec.

- 21-546. Periodic requests for examination of hospitalized patient; procedure for examination and detention or release; petition to court.
- 21-547. Judicial determination of petition filed under section 21-546; order; physicians and qualified psychologists as witnesses.
- 21-548. Periodic examinations by hospital authorities; release.
- 21-549. Preservation of other rights to release.
- 21-550. Surety.
- 21-551. Nonresidents.

Subchapter V. Right to Communication; Exercise of Other Rights.

- 21-561. Mail privileges; censored mail; return to sender; visiting hours.
- 21-562. Medical and psychiatric care and treatment; records.
- 21-563. Use of mechanical restraints; record of use.
- 21-564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964.
- 21-565. Statement of release and adjudication procedures and of other rights.

Subchapter VI. Miscellaneous Provisions.

- 21-581. Proceedings instituted by Mayor of the District of Columbia.
- 21-582. Petitions, applications, or certificates of physicians or qualified psychologists.
- 21-583. Physicians, psychiatrists and qualified psychologists as witnesses.
- 21-584. Witness fees.
- 21-585. Confinement in jail prohibited.
- 21-586. Financial responsibility for care of hospitalized persons; judicial enforcement.
- 21-587. Veterans' Administration and military hospital facilities.
- 21-588. Forms.
- 21-589. Persons hospitalized prior to September 15, 1964.
- 21-590. Discharge as cured; restoration to legal status.
- 21-591. Offenses and penalties.
- 21-592. Return to hospital of an escaped mentally ill person.

*Subchapter I. Definitions; Commission on Mental Health.***§ 21-501. Definitions.**

As used in the chapter:

(1) "Administrator" means a person in charge of a public or private hospital or his delegate;

(2) "Chief of service" means the physician or qualified psychologist charged with overall responsibility for the professional program of care and treatment in the particular administrative unit of the hospital to which the patient has been admitted or such other member of the medical staff as the chief of service designates;

(3) "Commission" means the Commission on Mental Health;

(4) "Court" means the Superior Court of the District of Columbia;

(5) "Mental illness" means a psychosis or other disease which substantially impairs the mental health of a person;

(6) "Mentally ill person" means a person who has a mental illness, but does not include a person committed to a private or public hospital in the District of Columbia by order of the court in a criminal proceeding;

(7) "Physician" means a person licensed under the laws of the District of Columbia to practice medicine, or a person who practices medicine in the employment of the Government of the United States or of the District of Columbia;

(8) "Private hospital" means a nongovernmental hospital or institution, or part thereof, in the District of Columbia, equipped and qualified to provide inpatient care and treatment for a person suffering from a physical or mental illness;

(9) "Public hospital" means a hospital or institution, or part thereof, in the District of Columbia, owned and operated by the Government of the United States or of the District of Columbia, equipped and qualified to provide inpatient care and treatment for persons suffering from physical or mental illness; and

(10) "Qualified psychologist" means a person who is licensed pursuant to section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Code, sec. 2-3305.1), and has (1) one year of formal training within a hospital setting; or (2) two years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral. (Sept. 14, 1965, 79 Stat. 751, Pub. L. 89-183, § 1, July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(1); 1973 Ed., § 21-501; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(4), (b), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(c), 35 DCR 147; Apr. 9, 1997, D.C. Law 11-255, § 20(b), 44 DCR 1271.)

Cross references. — As to representation of indigents, see § 11-2601.

As to Interstate Compact on Mental Health, see §§ 6-1801 to 6-1806.

As to jurisdiction of Family Division of Superior Court, see § 11-1101.

As to other provisions concerning mentally ill persons, see §§ 21-901 to 21-908, 21-2001 to 21-2085, 24-301 to 24-303 and 32-621 to 32-628.

Section references. — This section is referred to in §§ 16-2301, 20-303, 21-901, and 21-2203.

Effect of amendments. — D.C. Law 11-255 added the paragraph designations and made related capitalization changes.

Legislative history of Law 5-48. — Law 5-48, the “Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983,” was introduced in Council and assigned Bill No. 5-166, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Purpose of chapter. — This chapter evinces the intention of Congress to permit emergency confinement for only short and precisely circumscribed durations. In re DeLoatch, App. D.C., 532 A.2d 1343 (1987).

This chapter had as one of its central purposes the goal of assuring that patients hospitalized under it would not automatically be deprived of their basic constitutional rights. *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979).

Both the language and the legislative history of the Ervin Act (§ 21-501 et seq.) make clear that its major purpose is to protect the constitutional rights of certain individuals who are mentally ill, and to provide for their care, treatment, and hospitalization in the District of Columbia. In re Myrick, App. D.C., 624 A.2d 1222 (1993).

Construction. — The Mentally Ill Act is construed narrowly where its application re-

sults in the curtailment of an individual's liberty. In re Reed, App. D.C., 571 A.2d 801 (1990).

“Mental illness.” — A psychosis is a mental disturbance which may or may not have physiological roots, however, the definition of “mental illness” reflects a fuller, more contextual conception of mental disturbances and is accorded a liberal construction such that a psychosis is considered to be a disease for the purposes of this chapter. In re Rosell, App. D.C., 547 A.2d 180 (1988).

Diagnosis that a patient was suffering from two mental disorders as opposed to a psychosis or disease was sufficient to bring the patient under the scope of this chapter. In re Rosell, App. D.C., 547 A.2d 180 (1988).

Illegal detention. — Neither a court's ex parte probable cause determination, nor an adversarial revocation hearing could cure patient's illegal detention for 10 days without any judicial review. In re Feenster, App. D.C., 561 A.2d 997 (1989).

Voluntary outpatient's treatment as an involuntarily hospitalized inpatient violated the Hospitalization of the Mentally Ill Act because he was held for 10 days without a judicial hearing to determine whether probable cause existed for such involuntary hospitalization. In re Feenster, App. D.C., 561 A.2d 997 (1989).

Hospital superintendent could not appeal order releasing person. — A hospital superintendent could not appeal a trial court's order releasing one whom he had sought unsuccessfully to have judicially hospitalized under this chapter because the superintendent was not an “aggrieved party” within the meaning of § 11-721(b) and because any right of appeal granted to him would be contrary to the design and intent of this chapter, which emphasizes promptness of determination and the immediate release of persons determined to be either not mentally ill or not dangerously mentally ill. In re Lomax, App. D.C., 386 A.2d 1185 (1978).

Cited in *Cross v. Harris*, 418 F.2d 1095 (D.C. Cir. 1969); *United States v. Jackson*, 553 F.2d 109 (D.C. Cir. 1976); *Benson v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978); In re Kossow, App. D.C., 393 A.2d 97 (1978); *Bynes v. Scheve*, App. D.C., 435 A.2d 1058 (1981); In re James, App. D.C., 507 A.2d 155 (1986); In re D.W.G., 115 WLR 2097 (Super. Ct.); *Johnson v. Dixon*, 786 F. Supp. 1 (D.D.C. 1991); *United States v. Cotman*, 119 WLR 1173 (Super. Ct. 1991); *Brown v. United States*, App. D.C., 682 A.2d 1131 (1996).

§ 21-501.1. Qualified psychologists.

(a) Qualified psychologists are subject to the restrictions and qualifications for practice contained in the District of Columbia Health Occupations Revision

Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Code, sec. 2-3301.1 et seq.).

(b) Whenever a qualified psychologist may have the responsibility for the voluntary, nonprotesting, emergency, or court-ordered hospitalization of a mentally ill patient, that qualified psychologist or the hospital shall, prior to or at the time of hospital admission, identify a psychiatrist or other appropriate physician with admitting privileges at the hospital who shall be responsible for the medical evaluation and medical management of the patient for the duration of the patient's hospitalization. The qualified psychologist shall be responsible for all other evaluation and management of the patient. (Feb. 24, 1984, D.C. Law 5-48, § 11(c), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(d), 35 DCR 147.)

Legislative history of Law 5-48. — See note to § 21-501.

Legislative history of Law 7-104. — See note to § 21-501.

§ 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries.

(a) The Commission on Mental Health is continued. The Superior Court of the District of Columbia shall appoint the members of the Commission, and the Commission shall be composed of nine members. One member shall be a member of the bar of the court, who has engaged in active practice of law in the District of Columbia for a period of at least five years prior to his appointment. He shall be the Chairman of the Commission and act as the administrative head of the Commission and its staff. He shall preside at all hearings and direct all of the proceedings before the Commission. He shall devote his entire time to the work of the Commission. Eight members of the Commission shall be physicians who have been practicing medicine in the District of Columbia and who have had not less than five years' experience in the diagnosis and treatment of mental illnesses.

(b) Appointment of members of the Commission shall be for terms of four years each, which shall be staggered as provided by section 2 of the Act approved June 8, 1938 (chapter 326, 52 Stat. 625), under which, except for the original four-year term of the lawyer-member, staggered terms of one year for two members, two years for two members, three years for two members, and four years for two members, were made.

(c) The physician-members of the Commission shall serve on a part-time basis and shall be rotated by assignment of the Chief Judge of the court, so that at any one time the Commission shall consist of the Chairman and two physician-members. Physician-members of the Commission may practice their profession during their tenure of office, but may not participate in the disposition of the case of a person in which they have rendered professional service or advice.

(d) The court shall also appoint an alternate lawyer-member of the Commission who shall have the same qualifications as the lawyer-member of the

Commission and who shall serve on a part-time basis and act as Chairman in the absence of the permanent Chairman.

(e) The salaries of the members of the Commission and its employees shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended. The alternate Chairman shall be paid on a per diem basis at the same rate of compensation as fixed for the permanent Chairman. (Sept. 14, 1965, 79 Stat. 751, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(1); 1973 Ed., § 21-502.)

References in text. — The Classification Act of 1949, as amended, referred to in the first sentence in subsection (e) of this section, was repealed by the Act of September 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a).

Governing Body of the Commission on Mental Health Services established. — See Mayor's Order 88-168, July 13, 1988.

Legislative intent. — By retaining the definitional language "physician of the person in question" in the face of suggestions that less restrictive language be substituted in subsection (c) of this section, Congress appears to have intended to identify a physician who would be empowered to initiate the emergency hospitalization procedure by his relationship with the person in question and not merely by his identification as a member of the profession.

Williams v. Meredith, App. D.C., 407 A.2d 569 (1979).

Particular relationship by physician required. — This section includes physicians without regard to whether they are publicly or privately employed, but it requires of them a particular relationship with the individual as a precondition to acting. *Williams v. Meredith*, App. D.C., 407 A.2d 569 (1979).

Commission members excluded. — "Physician of the person in question" does not include physician-members of the Commission who participated in recommending that the person in question be hospitalized. *Williams v. Meredith*, App. D.C., 407 A.2d 569 (1979).

Cited in *In re Kossow*, App. D.C., 393 A.2d 97 (1978); *In re Morrow*, App. D.C., 463 A.2d 689 (1983).

§ 21-503. Examinations and hearings; subpoenas; witnesses; place.

(a) The Commission shall examine alleged mentally ill persons, inquire into their affairs and the affairs of persons who may be legally liable for their support, and make reports and recommendations to the court.

(b) Except as otherwise provided by this chapter, the Commission may conduct its examinations and hearings either at the courthouse or elsewhere at its discretion. The court may issue subpoenas at the request of the Commission returnable before the Commission, for the appearance of the alleged mentally ill person, witnesses, and persons who may be liable for his support. The Commission, or any of the members thereof, are competent and compellable witnesses at any trial, hearing or other proceeding conducted pursuant to this chapter and the physician- or psychologist-patient privilege is not applicable. (Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1; 1973 Ed., § 21-503; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(5), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(e), 35 DCR 147.)

Legislative history of Law 5-48. — See note to § 21-501.

Legislative history of Law 7-104. — See note to § 21-501.

Actions of Commission Psychiatrist. — Psychiatrist did not exceed his statutory au-

thority as Commission psychiatrist by conducting post-hearing examinations. *In re Morrow*, App. D.C., 463 A.2d 689 (1983).

Permitting the Commission psychiatrist to testify as to his post-hearing examinations of a respondent in a civil commitment case did not

violate her rights under this chapter and did not require declaration of mistrial. *In re Morrow*, App. D.C., 463 A.2d 689 (1983).

Expert testimony on future dangerousness. — Motion to exclude all expert testimony

on the issue of future dangerousness to self or others in a civil commitment proceeding denied. *In re Banks*, 114 WLR 1857 (Super. Ct. 1986).

Subchapter II. Voluntary and Nonprotesting Hospitalization.

§ 21-511. Voluntary hospitalization.

A person may apply to a public or private hospital in the District of Columbia for admission to the hospital as a voluntary patient for the purposes of observation, diagnosis, and care and treatment of a mental illness. Upon the request of such a person 18 years of age or over, or, in the case of a person under 18 years of age, of his spouse, parent, or legal guardian, the administrator of the public hospital to which application is made shall, if an examination by an admitting psychiatrist or an admitting qualified psychologist reveals the need for hospitalization, or the administrator of the private hospital to which application is made may, admit the person as a voluntary patient to the hospital for the purposes described by this section, in accordance with this chapter. (Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1; 1973 Ed., § 21-511; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(6), 30 DCR 5778.)

Section references. — This section is referred to in § 21-512.

Legislative history of Law 5-48. — See note to § 21-501.

Public hospitals — Public hospitals in the District must accept voluntary patients for treatment. *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979).

Exempted facilities. — Section 21-587 was intended as an exemption for Veterans' Administration and military facilities from the broad

requirement of this section, not as an affirmative requirement that other public hospitals transfer eligible patients to them. *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979).

Cited in *Carradine v. United States*, App. D.C., 420 A.2d 1385 (1980); *In re Rosell*, App. D.C., 547 A.2d 180 (1988); *In re Myrick*, App. D.C., 624 A.2d 1222 (1993); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-512. Release of voluntary patients.

(a) A voluntary patient admitted to a hospital pursuant to section 21-511 may, at any time, if he is 18 years of age or over, obtain his release from the hospital by filing a written request with the chief of service. Within a period of 48 hours after the receipt of the request, the chief of service shall release the patient making the request. A voluntary patient under 18 years of age, so admitted, may, at any time, obtain his release from the hospital in the same manner, upon the written request of his spouse, parent, or legal guardian.

(b) When the chief of service determines that a voluntary patient hospitalized pursuant to section 21-511 has recovered or that continued hospitalization of the patient is no longer beneficial to him, or advisable, the chief of service may release him from the hospital. (Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1; 1973 Ed., § 21-512.)

Section references. — This section is referred to in § 21-526.

Change of voluntary patient's status to involuntary. — Once an individual seeks and

is amenable to voluntary treatment, any subsequent steps taken to change that person's status from a voluntary patient to an involuntary patient are invalid. *In re Blair*, App. D.C., 510 A.2d 1048 (1986).

The involuntary detention of patient seeking voluntary admission held null

and void. — *In re Blair*, App. D.C., 510 A.2d 1048 (1986).

Cited in *Carradine v. United States*, App. D.C., 420 A.2d 1385 (1980); *In re Feenster*, App. D.C., 561 A.2d 997 (1989); *In re Plummer*, App. D.C., 608 A.2d 741 (1992); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-513. Hospitalization of nonprotesting persons.

A friend or relative of a person believed to be suffering from a mental illness may apply on behalf of that person to the admitting psychiatrist or the admitting qualified psychologist of a hospital by presenting the person, together with a referral from a practicing physician or qualified psychologist. For the purpose of examination and treatment, a private hospital may accept a person so presented and referred, and a public hospital shall accept a person so presented and referred, if, in the judgment of the admitting psychiatrist or the admitting qualified psychologist, the need for examination and treatment is indicated on the basis of the person's mental condition and the person signs a statement at the time of the admission stating that he does not object to hospitalization. The statement shall contain in simple, nontechnical language the fact that the person is to be hospitalized and a description of the right to release set out in section 21-514. The admitting psychiatrist or the admitting qualified psychologist may admit a person so presented, without referral from a practicing physician or qualified psychologist, if the need for an immediate admission is apparent to the admitting psychiatrist or the admitting qualified psychologist upon preliminary examination. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; 1973 Ed., § 21-513; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(7), 30 DCR 5778.)

Section references. — This section is referred to in § 21-514.

Legislative history of Law 5-48. — See note to § 21-501.

Cited in *In re Walls*, 442 F.2d 749 (D.C. Cir. 1971).

§ 21-514. Release of patients hospitalized under section 21-513.

Unless proceedings for hospitalization under court order have been initiated under subchapter IV of this chapter, a hospital, upon the written request of a patient hospitalized pursuant to section 21-513, shall immediately release him. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; 1973 Ed., § 21-514.)

Section references. — This section is referred to in § 21-513.

*Subchapter III. Emergency Hospitalization.***§ 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital.**

An accredited officer or agent of the Department of Human Services of the District of Columbia, or an officer authorized to make arrests in the District of Columbia, or a physician or qualified psychologist of the person in question, who has reason to believe that a person is mentally ill and, because of the illness, is likely to injure himself or others if he is not immediately detained may, without a warrant, take the person into custody, transport him to a public or private hospital, and make application for his admission thereto for purposes of emergency observation and diagnosis. The application shall reveal the circumstances under which the person was taken into custody and the reasons therefor. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(2); 1973 Ed., § 21-521; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(8), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(f), 35 DCR 147.)

Cross references. — As to appointment of guardian ad litem in proceedings for condemnation of insanitary buildings, see § 5-709.

As to property of persons mentally ill, see § 21-2001 et seq.

As to care and commitment of mentally ill persons at St. Elizabeths Hospital, see §§ 21-901 to 21-908 and 32-621 to 32-628.

As to guardian ad litem in proceedings for appointment of conservator, see §§ 21-2041 to 21-2049.

As to suits to annul marriage, see § 30-104.

As to release of dower, see § 19-107a.

As to exemption from military service, see § 39-101.

As to rights under real estate leases, see §§ 45-1422 to 45-1428.

As to redemption from tax sales within 1 year after removal of disability, see § 47-1304.

As to duty to file schedule of personal property for taxation, see § 47-1601.

Section references. — This section is referred to in §§ 6-2023, 16-2315, 21-522, and 21-582.

Legislative history of Law 5-48. — See note to § 21-501.

Legislative history of Law 7-104. — See note to § 21-501.

Constitutionality of section. — The standard for an involuntary commitment under this section is sufficiently definite to survive a constitutional challenge of vagueness. In re Alexander, 336 F. Supp. 1305 (D.D.C. 1972).

The fact that Congress has legislated 2 statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations

and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District is neither a state nor territory, but a federal enclave, and Congress may legislate a detention statute applicable only within the District. Medynski v. Margolis, 389 F. Supp. 743 (D.D.C. 1975).

Construction. — The Mentally Ill Act is construed narrowly where its application results in the curtailment of an individual's liberty. In re Reed, App. D.C., 571 A.2d 801 (1990).

Physician. — A physician under this section is someone who is acting as more than a mere member of the medical profession; rather, the physician must possess a patient-oriented role identification. In re Rosell, App. D.C., 547 A.2d 180 (1988).

Qualification of psychiatric witnesses. — In civil commitment case which focused heavily on defendant's deterioration when he failed to take his prescribed medication, the trial judge correctly found the District's psychiatric witnesses to be qualified to testify with respect to whether defendant was likely to injure himself or others if he was left to his own devices and without medical supervision, where the evidence on which the District's psychiatric witnesses relied included statements by members of defendant's family and records of his past hospitalizations, and was of a kind reasonably and customarily relied on by experts in the field. In re Melton, App. D.C., 597 A.2d 892 (1991).

Defects in detention under this section. — The court's subsequent determination of probable cause for further detention can remedy the imperfection of the initial application

under this section. In re Rosell, App. D.C., 547 A.2d 180 (1988).

A defect in an application for involuntary hospitalization should be taken into account insofar as it may bear upon the reliability and integrity of the application and the information therein, but should not be treated as a per se cause for immediate termination of the proceedings and release of the person involved no matter how dangerous to self or others. In re Herman, App. D.C., 619 A.2d 958 (1993).

Defects in an application are not "cured" or "remedied" by subsequent judicial determination under §§ 21-524 and 21-525. In re Herman, App. D.C., 619 A.2d 958 (1993).

Failure to comply with application requirements may render initial detention null and void. — Failure to comply with requirements of an Application for Emergency Hospitalization rendered appellant's initial detention null and void and resulted in the case's remand to the trial court for entry of an order directing the hospital to correct its records to so indicate. In re Morris, App. D.C., 482 A.2d 369 (1984).

Right to commit. — An individual may not be civilly committed unless it is demonstrated that he is likely to injure himself or others. Tran Van Khiem v. United States, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

Invalid initial detention held not to affect subsequent 7-day detention. — Though appellant's initial detention was null and void, due to a failure to comply with the application requirements, his subsequent 7-day detention was not invalid as it was based on an ex parte hearing separate from the initial detention process. In re Morris, App. D.C., 482 A.2d 369 (1984).

Involuntary detention held "seizure." — Although there was no arrest of the person who was involuntarily detained on the ground that he was mentally ill and likely to injure himself or others, he was "seized" within meaning of Fourth Amendment when he was taken into custody and involuntarily deprived of his liberty. In re Barnard, 455 F.2d 1370 (D.C. Cir. 1971).

State action. — No state action is involved in executing an application for involuntary commitment; thus a doctor executing an application to detain an individual pursuant to this section is not liable under 42 U.S.C. § 1981. Willacy v. Lewis, 598 F. Supp. 346 (D.D.C. 1984).

Liability of medical personnel generally. — With all of the statutory protections built into this act, the fear of the isolated case of bad faith or malicious action in initiating commitment of an individual for alleged mental illness does not justify a qualified immunity approach, which may quell legitimate action of para-

medical and medical personnel in far more cases where the failure to act will unduly expose the public or the individual to harm. Magwood v. Giddings, 122 WLR 241 (Super. Ct. 1993).

The required element of causation cannot be demonstrated in a claim against any party involved in the preliminary steps of a potential patient's confinement under this act, since an indispensable prerequisite to confinement for emergency observation and diagnosis is the certification by a psychiatrist of the hospital that there are reasonable grounds to believe the individual to be mentally ill and dangerous, that is likely to injure herself or others; this intervening action breaks the chain of causation as the basis for any civil liability. Magwood v. Giddings, 122 WLR 241 (Super. Ct. 1993).

Individual defendants, who were part of hospital staff, were immune from liability for claim of improper involuntary commitment by virtue of having absolute immunity under the statutory provisions and procedures of this act. Magwood v. Giddings, 122 WLR 241 (Super. Ct. 1993).

Liability of medical personnel for false imprisonment. — Where a mental health specialist employed by the Commission on Mental Health Services in the Emergency Psychiatric Response Division had a reasonable belief that a person was mentally ill and likely to injure herself if not immediately detained, he was statutorily empowered to detain her and initiate her emergency hospitalization without being liable for false imprisonment. Magwood v. Giddings, App. D.C., 672 A.2d 1083 (1996).

Materials considered by court. — The administrator of a hospital is not required to make a personal examination of the person detained; the reports of the "applicant" (physician or otherwise), under this section, and of a staff psychiatrist who examines the patient and provides the "certificate," under § 21-522, are the principal data considered by the court in ruling on the petition. Dobbs v. Duncan, App. D.C., 458 A.2d 719 (1983).

Petition commenced judicial proceedings. — A physician's petition for the hospitalization of a patient commenced judicial proceedings so that the detention of the patient during the course of the proceedings was authorized even though the petition was not filed until almost 4 weeks after the patient had been admitted to the hospital. In re Perry, 269 F. Supp. 729 (D.D.C. 1967).

Right to therapeutic program. — Every patient hospitalized for observation is not necessarily entitled to an immediate and full-blown therapeutic program. In re Curry, 452 F.2d 1360 (D.C. Cir. 1971).

Cited in Johnson v. United States, 547 F.2d 688 (D.C. Cir. 1976); Bension v. Meredith, 455 F. Supp. 662 (D.D.C. 1978); In re Lomax, App.

D.C., 386 A.2d 1185 (1978); *In re Nelson*, App. D.C., 408 A.2d 1233 (1979); *Thomas v. United States*, App. D.C., 418 A.2d 122 (1980); *In re Snowden*, App. D.C., 423 A.2d 188 (1980); *In re Mendoza*, App. D.C., 433 A.2d 1069 (1981); *United States v. Ellerbee*, App. D.C., 481 A.2d 473 (1984); *In re James*, App. D.C., 507 A.2d 155 (1986); *In re DeLoatch*, App. D.C., 532 A.2d

1343 (1987); *Horton v. United States*, App. D.C., 591 A.2d 1280 (1991); *Trerotola v. Cotter*, App. D.C., 601 A.2d 60 (1991); *In re Artis*, App. D.C., 615 A.2d 1148 (1992); *In re Reynard*, App. D.C., 616 A.2d 1262 (1992); *In re Myrick*, App. D.C., 624 A.2d 1222 (1993); *In re Barlow*, App. D.C., 634 A.2d 1246 (1993).

§ 21-522. Examination and admission to hospital; notice.

Subject to the provisions of section 21-523, the administrator of a private hospital, may, and the administrator of a public hospital shall, admit and detain for purposes of emergency observation and diagnosis a person with respect to whom application is made under section 21-521, if the application is accompanied by a certificate of a psychiatrist or qualified psychologist on duty at the hospital stating that he has examined the person and is of the opinion that he has symptoms of a mental illness and, as a result thereof, is likely to injure himself or others unless he is immediately hospitalized. Not later than 24 hours after the admission pursuant to this subchapter of a person to a hospital, the administrator of the hospital shall serve notice of the admission, by registered mail, to the spouse, parent, or legal guardian of the person and to the Commission on Mental Health. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; 1973 Ed., § 21-522; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(9), 30 DCR 5778.)

Section references. — This section is referred to in §§ 21-523 and 21-524.

Legislative history of Law 5-48. — See note to § 21-501.

Initiation of therapeutic process. — The overall therapeutic process, that begins with observation and diagnosis to determine whether treatment is required, must be initiated as soon as the period of involuntary hospitalization in a public hospital begins. *In re Curry*, 452 F.2d 1360 (D.C. Cir. 1971).

Materials considered by court. — The administrator of a hospital is not required to make a personal examination of the person detained; the reports of the "applicant" (physician or otherwise), under § 21-521, and of a staff psychiatrist who examines the patient and provides the "certificate," under this section, are the principal data considered by the court in ruling on the petition. *Dobbs v. Duncan*, App. D.C., 458 A.2d 719 (1983).

Right to therapeutic program. — Every patient hospitalized for observation is not necessarily entitled to an immediate and full-blown therapeutic program. *In re Curry*, 452 F.2d 1360 (D.C. Cir. 1971).

One confined in a hospital involuntarily for a limited period for the purposes of "observation and diagnosis" has the right to be given the attention incident to such observation and diagnosis. *In re Curry*, 452 F.2d 1360 (D.C. Cir. 1971).

Presumption of appropriate observation program. — There is no irrebuttable presumption that an involuntary patient in a hospital is receiving the appropriate program of observation merely because he is hospitalized under this section which permits "emergency observation and diagnosis." *In re Curry*, 452 F.2d 1360 (D.C. Cir. 1971).

Duty imposed. — Under this section, the examination requirement preconditioning the admission to and detention of a suspected patient in a hospital is imposed upon the psychiatrist on duty at the hospital and not upon the initiating physician. *Johnson v. United States*, 547 F.2d 688 (D.C. Cir. 1976).

Cited in *In re Curry*, 470 F.2d 368 (D.C. Cir. 1972); *In re Lomax*, App. D.C., 386 A.2d 1185 (1978); *In re Boyd*, App. D.C., 403 A.2d 744 (1979); *Williams v. Meredith*, App. D.C., 407 A.2d 569 (1979); *In re Mendoza*, App. D.C., 433 A.2d 1069 (1981); *United States v. Ellerbee*, App. D.C., 481 A.2d 473 (1984); *In re Bryant*, App. D.C., 542 A.2d 1216 (1988); *In re W.F.*, 116 WLR 1913 (Super. Ct.); *In re Reed*, App. D.C., 571 A.2d 801 (1990); *In re Melton*, App. D.C., 597 A.2d 892 (1991); *In re Herman*, App. D.C., 619 A.2d 958 (1993); *In re Gaither*, App. D.C., 626 A.2d 920 (1993); *In re Barlow*, App. D.C., 634 A.2d 1246 (1993); *Magwood v. Giddings*, 122 WLR 241 (Super. Ct. 1993); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation.

A person admitted to a hospital under section 21-522 may not be detained in the hospital for a period in excess of 48 hours from the time of his admission, unless the administrator of the hospital has, within that period, filed a written petition with the court for an order authorizing the continued hospitalization of the person for emergency observation and diagnosis for a period not to exceed 7 days from the time the order is entered. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; 1973 Ed., § 21-523.)

Section references. — This section is referred to in §§ 21-522, 21-524, and 21-526.

Defects in initial detention under § 21-521. — The court's ex parte determination of probable cause for further detention can remedy the imperfection of the initial application under § 21-521. In re Rosell, App. D.C., 547 A.2d 180 (1988).

Construction. — The word "time" in this section refers to the time of day, and seven days "from the time the order was entered" means exactly seven days from the hour and minute when the order of temporary commitment was entered. In re Strickland, App. D.C., 597 A.2d 869 (1991).

Invalid initial detention held not to affect subsequent 7-day detention. — Though appellant's initial detention was null and void, due to a failure to comply with the application requirements, his subsequent 7-day detention was not invalid as it was based on an ex parte hearing separate from the initial detention process. In re Morris, App. D.C., 482 A.2d 369 (1984).

Materials considered by court. — The administrator of a hospital is not required to make a personal examination of the person detained; the reports of the "applicant" (physician or otherwise), under § 21-521, and of a staff psychiatrist who examines the patient and provides the "certificate," under § 21-522, are the principal data considered by the court in ruling on the petition. Dobbs v. Duncan, App. D.C., 458 A.2d 719 (1983).

Failure to file judicial hospitalization petition. — Where hospital failed to file its judicial hospitalization petition within seven-day period prescribed by this section, hospital could not rely on § 21-528 as authority to retain mentally ill patient pending course of judicial proceedings and subsequent judicial review did not cure failure to meet deadline. In re Reed, App. D.C., 571 A.2d 801 (1990).

Evidence of prior dangerousness. — The government was not precluded from presenting evidence relating to dangerousness which predated the jury verdict in the first civil commitment trial because both the trial court and the Mental Health Commission, §§ 21-542, 21-544, can identify and dismiss petitions grounded on outdated and insubstantial evidence of current mental illness and dangerousness. In re Katz, App. D.C., 638 A.2d 684 (1994).

Cited in In re Perry, 269 F. Supp. 729 (D.D.C. 1967); In re Curry, 470 F.2d 368 (D.C. Cir. 1972); Bension v. Meredith, 455 F. Supp. 662 (D.D.C. 1978); In re Lomax, App. D.C., 386 A.2d 1185 (1978); Williams v. Meredith, App. D.C., 407 A.2d 569 (1979); Thomas v. United States, App. D.C., 418 A.2d 122 (1980); In re DeLoatch, App. D.C., 532 A.2d 1343 (1987); In re Artis, App. D.C., 615 A.2d 1148 (1992); In re Reynard, App. D.C., 616 A.2d 1262 (1992); In re Herman, App. D.C., 619 A.2d 958 (1993); In re Myrick, App. D.C., 624 A.2d 1222 (1993).

§ 21-524. Determination and order of court.

(a) Within a period of 24 hours after the court receives a petition for hospitalization of a person for emergency observation and diagnosis, filed by the administrator of a hospital pursuant to section 21-523, the court shall:

- (1) order the hospitalization; or
- (2) order the person's immediate release.

(b) The court, in making its determination under this section, shall consider the written reports of the agent, officer, physician or qualified psychologist who

made the application under section 21-522, the certificate of the examining psychiatrist or examining qualified psychologist which accompanied it, and any other relevant information. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; 1973 Ed., § 21-524; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(10), 30 DCR 5778.)

Section references. — This section is referred to in §§ 21-525, 21-526, and 21-527.

Legislative history of Law 5-48. — See note to § 21-501.

Appointment of counsel. — The Public Defender Service should be appointed, at least until a retained counsel notes his appearance, to represent a patient who has been involuntarily detained on the grounds that he has symptoms of mental illness and is likely to injure himself or others. In re Barnard, 455 F.2d 1370 (D.C. Cir. 1971).

Materials considered by court. — The administrator of a hospital is not required to make a personal examination of the person detained; the reports of the "applicant" (physician or otherwise), under § 21-521, and of a staff psychiatrist who examines the patient and provides the "certificate," under § 21-522, are the principal data considered by the court in ruling on the petition. *Dobbs v. Duncan*, App. D.C., 458 A.2d 719 (1983).

Defects in initial detention under § 21-521. — The court's *ex parte* determination of probable cause for further detention can remedy the imperfection of the initial application under § 21-521. In re Rosell, App. D.C., 547 A.2d 180 (1988).

Defect in application for involuntary hospitalization. — A defect in an application for involuntary hospitalization should be taken

into account insofar as it may bear upon the reliability and integrity of the application and the information therein, but should not be treated as a *per se* cause for immediate termination of the proceedings and release of the person involved no matter how dangerous to self or others. In re Herman, App. D.C., 619 A.2d 958 (1993).

Defects in an application are not "cured" or "remedied" by subsequent judicial determination under this section and § 21-525. In re Herman, App. D.C., 619 A.2d 958 (1993).

Trial court is to focus on mental condition of person involved. — Under the statutory scheme established for emergency hospitalizations, when the trial court becomes involved in the process pursuant to this section or § 21-525, its focus should be on the present mental condition of the person involved and whether or not probable cause exists to believe that person is likely to injure himself or herself or others if not immediately detained. In re Herman, App. D.C., 619 A.2d 958 (1993).

Cited in *Benson v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978); In re Lomax, App. D.C., 386 A.2d 1185 (1978); *Williams v. Meredith*, App. D.C., 407 A.2d 569 (1979); *Thomas v. United States*, App. D.C., 418 A.2d 122 (1980); In re Reed, App. D.C., 571 A.2d 801 (1990); *Magwood v. Giddings*, 122 WLR 241 (Super. Ct. 1993).

§ 21-525. Hearing by court.

The court shall grant a hearing to a person whose continued hospitalization is ordered under section 21-524, if he requests the hearing. The hearing shall be held within 24 hours after receipt of the request. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; 1973 Ed., § 21-525.)

Section references. — This section is referred to in § 21-526.

Section is mandatory. — This section is mandatory: the use of the word "shall" in this section creates a duty, not an option. In re DeLoatch, App. D.C., 532 A.2d 1343 (1987).

Compliance with section. — This section is satisfied when the patient who requested a hearing is presented before a judicial officer who, on behalf of the judicial system, sets the hearing process in motion prior to the expiration of the 24-hour deadline. In re Barlow, App. D.C., 634 A.2d 1246 (1993).

Effect of noncompliance. — If a requested

hearing is not held within 24 hours, the detainee is to be released. In re DeLoatch, App. D.C., 532 A.2d 1343 (1987).

Trial court's failure to conduct hearing within 24 hours violated this section and trial court's ultimate determination of probable cause to continue emergency hospitalization of patient did not cure this violation. In re DeLoatch, App. D.C., 532 A.2d 1343 (1987).

Trial court is to focus on mental condition of person involved. — Under the statutory scheme established for emergency hospitalizations, when the trial court becomes involved in the process pursuant to § 21-524 or

this section, its focus should be on the present mental condition of the person involved and whether or not probable cause exists to believe that person is likely to injure himself or herself or others if not immediately detained. In re Herman, App. D.C., 619 A.2d 958 (1993).

Appointment of counsel. — The Public Defender Service should be appointed, at least until the retained counsel notes his appearance, to represent patient who has been involuntarily detained on the grounds that he has symptoms of mental illness and is likely to injure himself or others. In re Barnard, 455 F.2d 1370 (D.C. Cir. 1971).

Burden of proof. — The government has the initial burden of producing evidence showing probable cause justifying further detention of an involuntary patient. In re Barnard, 455 F.2d 1370 (D.C. Cir. 1971).

Evidence establishing probable cause. — Commitment papers containing mere conclusory statements will not suffice to provide probable cause at a hearing in relation to a person who has been involuntarily detained on the grounds that he is likely to injure himself or others. Conclusions in the papers must be sufficiently detailed and supported by the facts to allow the court to perform its function of passing on their credibility in determining whether probable cause exists for a continued incarceration. In re Barnard, 455 F.2d 1370 (D.C. Cir. 1971).

When patient establishes truth of allegations. — If the patient establishes the truth of his allegations, he must either be released or be provided care that is consonant with the goals of observation and diagnosis, and ultimately of the treatment if considered necessary under diagnosis. In re Curry, 452 F.2d 1360 (D.C. Cir. 1971).

Defect in application for involuntary hospitalization. — A defect in an application

for involuntary hospitalization should be taken into account insofar as it may bear upon the reliability and integrity of the application and the information therein, but should not be treated as a per se cause for immediate termination of the proceedings and release of the person involved no matter how dangerous to self or others. In re Herman, App. D.C., 619 A.2d 958 (1993).

Defects in an application are not “cured” or “remedied” by subsequent judicial determination under this section and § 21-525. In re Herman, App. D.C., 619 A.2d 958 (1993).

Government standing to appeal. — The government retains a narrow channel of appeal in cases that implicate fundamental questions as to the procedure by which the statutorily prescribed hospitalization or commitment process is completed. In re Barlow, App. D.C., 634 A.2d 1246 (1993).

Mootness. — Since hospital and trial courts will repeatedly encounter instances in which the maximum time period under this section will expire prior to the conclusion of probable cause hearings, the issue of dismissals before hearing the merits of a case was not moot. In re Barlow, App. D.C., 634 A.2d 1246 (1993).

Cited in In re Lomax, App. D.C., 386 A.2d 1185 (1978); Williams v. Meredith, App. D.C., 407 A.2d 569 (1979); Thomas v. United States, App. D.C., 418 A.2d 122 (1980); In re Morris, App. D.C., 482 A.2d 369 (1984); In re James, App. D.C., 507 A.2d 155 (1986); In re Rosell, App. D.C., 547 A.2d 180 (1988); In re Feenster, App. D.C., 561 A.2d 997 (1989); In re Reed, App. D.C., 571 A.2d 801 (1990); Walls v. United States, App. D.C., 601 A.2d 54 (1991); In re Thurston, 119 WLR 1265 (Super. Ct. 1991); In re Reynard, App. D.C., 616 A.2d 1262 (1992); Magwood v. Giddings, 122 WLR 241 (Super. Ct. 1993).

§ 21-526. Extension of maximum periods of time.

(a) If the maximum period of time prescribed by section 21-512, 21-523, 21-524, or 21-525, during which an action or determination may or shall be taken, expires on a Saturday, Sunday, or legal holiday, the period may be extended to not later than noon of the next succeeding day which is not a Saturday, Sunday, or legal holiday.

(b) If the maximum period of time prescribed by the sections listed in subsection (a) of this section expires between 12:01 a.m. and 12:00 noon on a Monday or the next business day following a legal holiday, the period shall be extended until 12:00 noon of that day, or, when the maximum period of time prescribed by the sections listed in subsection (a) of this section expires on a legal holiday, the period shall be extended until 12:00 noon of the next business day. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; 1973 Ed., § 21-526; June 30, 1989, D.C. Law 8-15, § 2, 36 DCR 3695.)

Legislative history of Law 8-15. — Law 8-15, the “District of Columbia Hospitalization of the Mentally Ill Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-72, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 18, 1989, and May 2, 1989, respectively. Signed by the Mayor on May 12, 1989, it was assigned Act No. 8-31 and transmitted to both Houses of Congress for its review.

Reasons for extensions. — Congress did not provide for an extension of time under any circumstances other than those set out in this section, including court congestion; if it had wished to do so, it could have. *In re DeLoatch*, App. D.C., 532 A.2d 1343 (1987).

Cited in *Williams v. Meredith*, App. D.C., 407 A.2d 569 (1979).

§ 21-527. Examination and release of person; notice.

The chief of service of a hospital in which a person is hospitalized under a court order entered pursuant to section 21-524 shall, within 48 hours after the order is entered, have the person examined by a physician or qualified psychologist. If the physician or qualified psychologist, after his examination, certifies that in his opinion the person is not mentally ill to the extent that he is likely to injure himself or others if not presently detained, the person shall be immediately released. The chief of service shall, within 48 hours after the examination has been completed, send a copy of the results thereof by certified or registered mail to the spouse, parents, attorney, legal guardian, or nearest known adult relative of the person examined. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; 1973 Ed., § 21-527; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(11), 30 DCR 5778.)

Legislative history of Law 5-48. — See A.2d 569 (1979); *In re Herman*, App. D.C., 619 note to § 21-501. A.2d 958 (1993).

Cited in *Williams v. Meredith*, App. D.C., 407

§ 21-528. Detention of person pending judicial proceedings.

Notwithstanding any other provision of this subchapter, the administrator of a hospital in which a person is hospitalized under this subchapter may, if judicial proceedings for his hospitalization have been commenced under subchapter IV of this chapter, detain the person in the hospital during the course of the judicial proceedings. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; 1973 Ed., § 21-528.)

Failure to file judicial hospitalization petition. — Where hospital failed to file its judicial hospitalization petition within seven-day period prescribed by § 21-523, hospital could not rely on this section as authority to retain mentally ill patient pending course of judicial proceedings and subsequent judicial review did not cure failure to meet deadline. *In re Reed*, App. D.C., 571 A.2d 801 (1990).

Cited in *In re Perry*, 269 F. Supp. 729 (D.D.C. 1967); *In re Curry*, 470 F.2d 368 (D.C. Cir.

1972); *In re Lomax*, App. D.C., 386 A.2d 1185 (1978); *Williams v. Meredith*, App. D.C., 407 A.2d 569 (1979); *Thomas v. United States*, App. D.C., 418 A.2d 122 (1980); *United States v. Ellerbee*, App. D.C., 481 A.2d 473 (1984); *Sanderlin v. United States*, 794 F.2d 727 (D.C. Cir. 1986); *In re Bryant*, App. D.C., 542 A.2d 1216 (1988); *In re Reynard*, App. D.C., 616 A.2d 1262 (1992); *In re Herman*, App. D.C., 619 A.2d 958 (1993).

*Subchapter IV. Hospitalization Under Court Order.***§ 21-541. Petition to Commission; copy to person affected.**

(a) Proceedings for the judicial hospitalization of a person in the District of Columbia may be commenced by the filing of a petition with the Commission on Mental Health by his spouse, parent, or legal guardian, by a physician or a qualified psychologist, by a duly accredited officer or agent of the Department of Human Services, or by an officer authorized to make arrests in the District of Columbia. The petition shall be accompanied by:

(1) a certificate of a physician or qualified psychologist stating that he has examined the person and is of the opinion that the person is mentally ill, and because of the illness is likely to injure himself or other persons if allowed to remain at liberty; or

(2) a sworn written statement by the petitioner that:

(A) the petitioner has good reason to believe that the person is mentally ill, and, because of the illness, is likely to injure himself or other persons if allowed to remain at liberty; and

(B) the person has refused to submit to examination by a physician or qualified psychologist.

(b) Within three days after the Commission receives a petition filed under subsection (a) of this section, the Commission shall send a copy of the petition by registered mail to the person with respect to whom it was filed. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; 1973 Ed., § 21-541; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(12), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(g), 35 DCR 147.)

Cross references. — As to payment of hospitalization expense for criminally insane, see § 24-301.

Section references. — This section is referred to in §§ 6-2032, 21-542, 21-551, and 21-582.

Legislative history of Law 5-48. — See note to § 21-501.

Legislative history of Law 7-104. — See note to § 21-501.

Constitutionality of section. — The standard for an involuntary commitment is sufficiently definite to survive a constitutional challenge of vagueness. In re Alexander, 336 F. Supp. 1305 (D.D.C. 1972).

Section does not require more of petitioner who is also physician. — That the petitioner is a physician does not require more of him than would be required of a spouse who has included with her petition a certificate of an examining physician. *Dobbs v. Duncan*, App. D.C., 458 A.2d 719 (1983).

Section 21-582(b) does not require petitioner who is physician and hospital superintendent to personally examine patient. — Section 21-582(b) does not require that a petition filed by a hospital superinten-

dent, who is himself a physician, and accompanied by a certificate of an examining physician also reflect that the superintendent personally examined the patient; it is enough that the superintendent's petition include separately the proper certificate of an examining physician. *Dobbs v. Duncan*, App. D.C., 458 A.2d 719 (1983).

Petition commenced judicial proceedings. — A physician's petition for hospitalization of a patient commenced judicial proceedings so that detention of the patient during the course of the proceedings was authorized even though the petition was not filed until almost 4 weeks after patient had been admitted to the hospital. In re Perry, 269 F. Supp. 729 (D.D.C. 1967).

Residency established for medical treatment at public expense. — Where a District of Columbia corporation was the custodian of a mentally retarded orphan, who was brought to the United States for the purpose of adoption, the orphan acquired a colorable claim to District of Columbia "residence" for purpose of medical treatment at public expense once she was placed directly in the custody of officials operating from the corporation's District of Co-

lumbia office, absent evidence that the transfer from the corporation's New York office was intended as anything less than an indefinite arrangement for her care or some residue of a permanent attachment to another jurisdiction; therefore, the District is liable for her care. *District of Columbia v. H.J.B.*, App. D.C., 359 A.2d 285 (1976).

Hospital may continue to hold person after filing judicial hospitalization petition. — Under § 21-528 the hospital may continue to hold a person after it has filed a petition for judicial hospitalization under this section. *In re Morris*, App. D.C., 482 A.2d 369 (1984).

Nonparticipation of prosecuting authority does not prevent commitment. — There is no statutory or constitutional command forbidding civil commitment of an individual in a judicial proceeding litigated by a private petitioner when the prosecuting authority has elected not to participate. *In re Kossov*, App. D.C., 393 A.2d 97 (1978).

Review of Commission's actions. — Absent a jury demand, the court at the hearing had the authority to evaluate the Commission hearing and to reject the Commission report. *In re Walls*, 442 F.2d 749 (D.C. Cir. 1971).

Cited in *Lake v. Cameron*, 364 F.2d 657 (D.C. Cir. 1966), cert. denied, 382 U.S. 863, 15 L. Ed. 2d 100, 86 S. Ct. 126 (1965); *Benson v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978); *In re*

Lomax, App. D.C., 386 A.2d 1185 (1978); *In re Boyd*, App. D.C., 403 A.2d 744 (1979); *Williams v. Meredith*, App. D.C., 407 A.2d 569 (1979); *In re Nelson*, App. D.C., 408 A.2d 1233 (1979); *Thomas v. United States*, App. D.C., 418 A.2d 122 (1980); *Teasley v. United States*, 662 F.2d 787 (D.C. Cir. 1980); *In re Holmes*, App. D.C., 422 A.2d 969 (1980); *In re Snowden*, App. D.C., 423 A.2d 188 (1980); *In re Mendoza*, App. D.C., 433 A.2d 1069 (1981); *In re Watts*, 110 WLR 2581 (Super. Ct.); *In re Morrow*, App. D.C., 463 A.2d 689 (1983); *United States v. Ellerbee*, App. D.C., 481 A.2d 473 (1984); *In re Taylor*, 112 WLR 1629 (Super. Ct.); *In re Samuels*, App. D.C., 507 A.2d 150 (1986); *Sanderlin v. United States*, 794 F.2d 727 (D.C. Cir. 1986); *In re Gahan*, App. D.C., 531 A.2d 661 (1987); *In re Bryant*, App. D.C., 542 A.2d 1216 (1988); *In re Stokes*, App. D.C., 546 A.2d 356 (1988); *In re Reed*, App. D.C., 571 A.2d 801 (1990); *In re W.A.F.*, App. D.C., 573 A.2d 1264 (1990); *In re Herman*, App. D.C., 594 A.2d 533 (1991), vacated, rehearing en banc granted, *In re Herman*, 604 A.2d 1391 (D.C. 1992); *United States v. Lightfoot*, 119 WLR 1845 (Super. Ct. 1991); *In re Artis*, App. D.C., 615 A.2d 1148 (1992); *In re Herman*, App. D.C., 619 A.2d 958 (1993); *In re Myrick*, App. D.C., 624 A.2d 1222 (1993); *In re Gaither*, App. D.C., 626 A.2d 920 (1993); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-542. Hearing by Commission; presence and rights of person affected; hearing regarding liability.

(a) The Commission shall promptly examine a person alleged to be mentally ill after the filing of a petition under section 21-541 and shall thereafter promptly hold a hearing on the issue of his mental illness. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the person named in such petition. In conducting the hearing, the Commission shall hear testimony of any person whose testimony may be relevant and shall receive all relevant evidence which may be offered. A person with respect to whom a hearing is held under this section may, in his discretion, be present at the hearing, to testify, and to present and cross-examine witnesses.

(b) The Commission shall also hold a hearing in order to determine liability under the provisions of section 21-586 for the expenses of hospitalization of the alleged mentally ill person, if it is determined that he is mentally ill and should be hospitalized as provided under this chapter. The hearing may be conducted separately from the hearing on the issue of mental illness. If conducted separately, it may be conducted by the Chairman of the Commission alone. (Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1; 1973 Ed., § 21-542.)

Section references. — This section is referred to in § 21-544.

Habeas corpus proceedings. — The aid of the Commission is available in habeas corpus proceedings as well as in commitment proceedings. *Lake v. Cameron*, 364 F.2d 657 (D.C. Cir. 1966), cert. denied, 382 U.S. 863, 86 S. Ct. 126, 15 L. Ed. 2d 100 (1965).

Purpose of Commission proceedings. — The purpose of Commission proceedings is not to adjudicate the issue of commitment in a final manner. Rather, it is to enable the Commission, a panel of neutral experts, to perform its preliminary screening function and to report responsibly its findings and recommendations to the court. *In re Holmes*, App. D.C., 422 A.2d 969 (1980).

Psychiatric examination does not require assistance of counsel. — The psychiatric examination is not a trial, hearing, or a proceeding requiring assistance of counsel. *In re Holmes*, App. D.C., 422 A.2d 969 (1980).

The fact that 2 members of the Commission examined appellant before the hearing, pursuant to subsection (a) of this section, does not make this examination a "proceeding" within the meaning of § 21-543 requiring the assistance of counsel. *In re Holmes*, App. D.C., 422 A.2d 969 (1980).

Cross examination. — Psychiatric examination is not type of "proceeding" that requires opportunity to cross-examine examiners or to object to their consideration of purportedly irrelevant material. *In re Holmes*, App. D.C., 422 A.2d 969 (1980).

Post-hearing proceedings. — Psychiatrist did not exceed his statutory authority as Commission psychiatrist by conducting post-hearing examinations. *In re Morrow*, App. D.C., 463 A.2d 689 (1983).

Permitting Commission psychiatrist to testify as to his post-hearing examinations of respondent in civil commitment case did not violate her rights under this chapter and did not require declaration of mistrial. *In re Morrow*, App. D.C., 463 A.2d 689 (1983).

Evidence of prior dangerousness. — The government was not precluded from presenting evidence relating to dangerousness which predated of the jury verdict in the first civil commitment trial because both the trial court, § 21-523, and the Mental Health Commission can identify and dismiss petitions grounded on outdated and insubstantial evidence of current mental illness and dangerousness. *In re Katz*, App. D.C., 638 A.2d 684 (1994).

Cited in *In re Lomax*, App. D.C., 386 A.2d 1185 (1978); *In re Kossow*, App. D.C., 393 A.2d 97 (1978); *Williams v. Meredith*, App. D.C., 407 A.2d 569 (1979); *Thomas v. United States*, App. D.C., 418 A.2d 122 (1980); *In re Watts*, 110 WLR 2581 (Super. Ct.); *In re Taylor*, 112 WLR 1629 (Super. Ct.); *Sanderlin v. United States*, 794 F.2d 727 (D.C. Cir. 1986); *In re Bryant*, App. D.C., 542 A.2d 1216 (1988); *In re Reed*, App. D.C., 571 A.2d 801 (1990); *In re Myrick*, App. D.C., 624 A.2d 1222 (1993).

§ 21-543. Representation by counsel; compensation; recess.

The alleged mentally ill person shall be represented by counsel in any proceeding before the Commission or the court, and if he fails or refuses to obtain counsel, the court shall appoint counsel to represent him. The counsel so appointed shall be awarded compensation by the court for his services in an amount determined by it to be fair and reasonable. The compensation shall be charged against the estate of the individual for whom the counsel was appointed, or against any unobligated funds of the Commission, as the court in its discretion directs. The Commission or the court, as the case may be, shall, at the request of the counsel so appointed, grant a recess in the proceeding to give the counsel an opportunity to prepare his case. A recess may not be granted for more than five days. (Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1; 1973 Ed., § 21-543.)

Transfer of prisoners to hospital requires protective procedures providing for a full system of procedural safeguards before a finding of mental illness can be made. *Matthews v. Hardy*, 420 F.2d 607 (D.C. Cir.

1969), cert. denied, 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423 (1970).

Appointment of counsel. — The Public Defender Service should be appointed at least until the retained counsel notes his appear-

ance, to represent a patient who has been involuntarily detained on the grounds that he has symptoms of mental illness and is likely to injure himself or others. In re Barnard, 455 F.2d 1370 (D.C. Cir. 1971).

Psychiatric examination does not require assistance of counsel. — The psychiatric examination is not a trial, hearing, or a proceeding requiring assistance of counsel. In re Holmes, App. D.C., 422 A.2d 969 (1980).

The fact that 2 members of the Commission examined appellant before the hearing, pursuant to § 21-542(a), does not make this examination a "proceeding" within the meaning of this section requiring the assistance of counsel. In re Holmes, App. D.C., 422 A.2d 969 (1980).

Cross examinations. — Psychiatric examination is not type of "proceeding" that requires opportunity to cross-examine examiners or to object to their consideration of purportedly ir-

relevant material. In re Holmes, App. D.C., 422 A.2d 969 (1980).

Summary rehospitalization. — Trial court may authorize outpatient's summary rehospitalization in certain situations, provided the patient is detained only temporarily, if the hospital provides the court with an affidavit, within 24 hours of the patient's return, reciting the reasons for his return and provides the patient's counsel with a copy of the affidavit. United States v. Ellerbee, App. D.C., 481 A.2d 473 (1984).

Waiver of right to counsel. — An alleged mentally ill person may not waive the right to counsel and appear pro se before the Commission in a civil commitment hearing. In re Burke, 114 WLR 1881 (Super. Ct.).

Cited in In re Kossow, App. D.C., 393 A.2d 97 (1978); Thomas v. United States, App. D.C., 418 A.2d 122 (1980).

§ 21-544. Determinations of Commission; report to court; copy to person affected; right to jury trial.

If the Commission finds, after a hearing under section 21-542, that the person with respect to whom the hearing was held is not mentally ill or if mentally ill, is not mentally ill to the extent that he is likely to injure himself or other persons if allowed to remain at liberty, the Commission shall immediately order his release and notify the court of that fact in writing. If the Commission finds, after the hearing, that the person with respect to whom the hearing was held is mentally ill, and because of the illness is likely to injure himself or other persons if allowed to remain at liberty, the Commission shall promptly report that fact, in writing, to the Superior Court of the District of Columbia. The report shall contain the Commission's findings of fact, conclusions of law, and recommendations. A copy of the report of the Commission shall be served personally on the alleged mentally ill person and his attorney. An alleged mentally ill person with respect to whom the report is made has the right to demand a jury trial, and the Commission, orally and in writing, shall advise him of this right. (Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(3); 1973 Ed., § 21-544.)

Section references. — This section is referred to in § 21-545.

Review of Commission's actions. — Absent a jury demand, the court at the hearing had the authority to evaluate the Commission hearing and to reject the Commission report. In re Walls, 442 F.2d 749 (D.C. Cir. 1971).

Danger to community. — Consideration of a person as a likely danger to the community is appropriate in commitment proceedings. Rouse v. Cameron, 387 F.2d 241 (D.C. Cir. 1967).

Treatability of person. — Treatability of one having a mental disease or defect is not an appropriate consideration. Rouse v. Cameron, 387 F.2d 241 (D.C. Cir. 1967).

Least restrictive alternative. — The principle of the least restrictive alternative is applicable to alternative dispositions within a hospital. Covington v. Harris, 419 F.2d 617 (D.C. Cir. 1969).

Habeas corpus proceedings. — The aid of the Commission is available in habeas corpus proceedings as well as in commitment proceedings. Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966), cert. denied, 382 U.S. 863, 15 L. Ed. 2d 100, 86 S. Ct. 126 (1965).

Cited in Cameron v. Mullen, 387 F.2d 193 (D.C. Cir. 1967); In re Lomax, App. D.C., 386 A.2d 1185 (1978); In re Kossow, App. D.C., 393 A.2d 97 (1978); Williams v. Meredith, App. D.C.,

407 A.2d 569 (1979); *Thomas v. United States*, App. D.C., 418 A.2d 122 (1980); *In re Holmes*, App. D.C., 422 A.2d 969 (1980); *In re Watts*, 110 WLR 2581 (Super. Ct.); *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983); *United States v. Ellerbee*, App. D.C.,

481 A.2d 473 (1984); *In re Taylor*, 112 WLR 1629 (Super. Ct.); *Sanderlin v. United States*, 794 F.2d 727 (D.C. Cir. 1986); *In re Melton*, App. D.C., 597 A.2d 892 (1991); *Reese v. United States*, App. D.C., 614 A.2d 506 (1992); *In re Herman*, App. D.C., 619 A.2d 958 (1993).

§ 21-545. Hearing and determination by court or jury; order; witnesses; jurors.

(a) Upon the receipt by the court of a report referred to in section 21-544, the court shall promptly set the matter for hearing and shall cause a written notice of the time and place of the final hearing to be served personally upon the person with respect to whom the report was made and his attorney, together with notice that he has five days following the date on which he is so served within which to demand a jury trial. The demand may be made by the person or by anyone in his behalf. If a jury trial is demanded within the five-day period, it shall be accorded by the court with all reasonable speed. If a timely demand for jury trial is not made, the court shall determine the person's mental condition on the basis of the report of the Commission, or on such further evidence in addition to the report as the court requires.

(b) If the court or jury, as the case may be, finds that the person is not mentally ill, the court shall dismiss the petition and order his release. If the court or jury finds that the person is mentally ill and, because of that illness, is likely to injure himself or other persons if allowed to remain at liberty, the court may order his hospitalization for an indeterminate period, or order any other alternative course of treatment which the court believes will be in the best interests of the person or of the public. The Commission, or a member thereof, shall be competent and compellable witnesses at a hearing or jury trial held pursuant to this chapter. The jury to be used in any case where a jury trial is demanded under this chapter shall be impaneled, upon order of the court, from the jurors in attendance upon other branches of the court, who shall perform the services in addition to and as part of their duties in the court. (Sept. 14, 1965, 79 Stat. 756, Pub. L. 89-183, § 1; 1973 Ed., § 21-545.)

Section references. — This section is referred to in §§ 21-546 and 21-551.

Narrow construction of involuntary commitment. — Involuntary commitment of a mentally ill person must be narrowly construed in order to avoid deprivations of liberty without due process of law. *Covington v. Harris*, 419 F.2d 617 (D.C. Cir. 1969).

An involuntary commitment to a hospital constitutes a significant deprivation of liberty that requires due process protections. *In re Nelson*, App. D.C., 408 A.2d 1233 (1979); *In re Mendoza*, App. D.C., 433 A.2d 1069 (1981).

Due process is satisfied where respondent is permitted to attend hearing and cross-examine accusers. *In re Taylor*, 112 WLR 1629 (Super. Ct.).

Transfer of prisoners to hospital requires protective procedures at least similar to those

providing for a full system of procedural safeguards before a finding of mental illness can be made. *Matthews v. Hardy*, 420 F.2d 607 (D.C. Cir. 1969), cert. denied, 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423 (1970).

Purpose of involuntary commitment. — Primary purpose of involuntary civil commitment is to provide psychiatric treatment to persons in need of the same, even though an ancillary concern may be for the state to protect its citizenry from the perceived dangers of the mentally ill. *In re Snowden*, App. D.C., 423 A.2d 188 (1980).

Commitment not determinative of mental competence. — Commitment to Saint Elizabeths under this section demonstrates only that a committee is mentally ill and likely to injure herself or others; it does not, at the same time, mean that the committee is legally

incompetent. In re Boyd, App. D.C., 403 A.2d 744 (1979).

Right to treatment by the least restrictive means. — Every person committed, whether as an inpatient or an outpatient, has the right to treatment by the least restrictive means, and has an interest in not being erroneously deprived of his freedom. In re Plummer, App. D.C., 608 A.2d 741 (1992).

Applicability of "least restrictive alternative" standard. — Although appellant's transfer from outpatient to inpatient status deprived him of a measure of freedom, thereby raising a due process issue otherwise requiring a trial court to use a clear and convincing standard, since his initial commitment provided for outpatient care and hospitalization when necessary, the transfer was properly obtained upon a determination that hospitalization was the least restrictive alternative. In re Mills, App. D.C., 467 A.2d 971 (1983).

Findings as to least restrictive course of treatment. — The trial court's failure to enunciate findings of fact that nursing home commitment was the least restrictive form of treatment was not error where the record revealed no instance where appellant requested any particularized findings from the court, and where the trial court was not interpreting a prior decree, but rather making a de novo determination following a jury trial and dispositional hearing over which it presided. In re Artis, App. D.C., 615 A.2d 1148 (1992).

Determination of least restrictive course of treatment. — In determining the least restrictive appropriate treatment, the trial court should undertake an inquiry which explores not only the availability of an alternative, but its worth when measured against the aspects of a given disposition, including (1) time: that is, what is the duration of commitment? (2) program therapy: e.g., will the patient be enrolled in a specific treatment plan? Will he or she be receiving individual psychotherapy? (3) activity or conduct: can we help solve the problem by prohibiting or proscribing specific conduct? and (4) location: should the patient be required to live in a certain setting? In re Stokes, App. D.C., 546 A.2d 356 (1988).

Alternative treatments. — Court has authority to explore alternative courses and facilities for treatment of patient involuntarily committed, both outside and within the hospital complex. In re Jones, 338 F. Supp. 428 (D.D.C. 1972).

Court has discretionary duty to investigate. — This section, providing that the court may order hospitalization or any other alternative course of treatment, makes the court's duty to investigate discretionary and not mandatory. Lake v. Cameron, 267 F. Supp. 155 (D.D.C. 1967).

Appointment of counsel. — Corporation counsel is not required to represent private petitioners seeking involuntary civil commitment of an adult son or daughter, and a Superior Court judge has no power to make such an appointment. District of Columbia v. Pryor, App. D.C., 366 A.2d 141 (1976).

Commitment to facility outside District. — The Ervin Act, §§ 21-501 — 21-592, governed the scope of the trial court's authority to order treatment for a mentally ill patient, as well as the responsibility for payment, wherever that treatment was available, including, if necessary, placement in a facility outside the District of Columbia. In re Myrick, App. D.C., 624 A.2d 1222 (1993).

Nonparticipation of prosecuting authority does not prevent commitment. — There is no statutory or constitutional command forbidding civil commitment of an individual in a judicial proceeding litigated by a private petitioner when the prosecuting authority has elected not to participate. In re Kossow, App. D.C., 393 A.2d 97 (1978).

Proof required to commit. — A "clear and convincing" standard is now the constitutionally appropriate burden of proof for civil commitment. In re Nelson, App. D.C., 408 A.2d 1233 (1979).

One cannot be civilly committed on a finding supported by less than clear and convincing evidence. In re Holmes, App. D.C., 422 A.2d 969 (1980).

Involuntary civil commitment is appropriate when a factfinder determines, by clear and convincing evidence, that the subject is likely to cause injury to himself or others by criminal conduct or otherwise. In re Mendoza, App. D.C., 433 A.2d 1069 (1981).

Likelihood of self-injury. — The appropriate inquiry, under this section as to the likelihood of self-injury is whether the individual is likely to injure herself in the future, and this prediction does not depend on the individual's having succeeded in causing injury to herself in the recent past. In re Gahan, App. D.C., 531 A.2d 661 (1987).

Finding required before revocation of outpatient commitment. — Where the revocation of a patient's outpatient commitment directly affects the patient's conditional liberty interest, the trial court must make an explicit finding that inpatient treatment is the least restrictive alternative before revoking that patient's outpatient commitment. In re James, App. D.C., 507 A.2d 155 (1986).

Indefinite convalescent leave. — Patient released on indefinite convalescent leave becomes a de facto outpatient, requiring the hospital to honor his due process rights when returning him to the institution. In re Plummer, App. D.C., 608 A.2d 741 (1992).

Advances in the medical treatment of the

mentally ill have made old distinctions between inpatients on convalescent leave and outpatients lose much of their clarity, but while old definitions may give way to new arrangements, the protection afforded under the Hospitalization of the Mentally Ill Act provides the patient procedural rights that must be respected before he can be involuntarily returned to the hospital. *In re Plummer*, App. D.C., 608 A.2d 741 (1992).

Procedural differences for civil and criminal commitments. — The standard for release is the same, regardless of whether a person is civilly committed or committed following the imposition of an insanity defense by the trial court, or committed after pleading not guilty by reason of insanity, however, there is a difference in the procedure for initial commitment, since the civil committee has the right to a jury trial on the questions of mental illness and dangerousness; the criminal acquittee, who has entered a plea of not guilty by reason of insanity, is committed without a prior hearing, and every 6 months thereafter is entitled only to a bench trial at which he, and not the government, bears the burden of proof. *Walls v. United States*, App. D.C., 601 A.2d 54 (1991).

Under *Streicher v. Prescott*, 663 F. Supp. 335 (D.D.C. 1987), the different consequences of a civil and criminal commitment have become greater, and a civil committee is entitled to the appointment of new counsel and a completely new civil commitment proceeding before a jury, at which the government has the burden to show by clear and convincing evidence that he requires hospitalization as the least restrictive alternative. *Walls v. United States*, App. D.C., 601 A.2d 54 (1991).

It is not required that the procedures of *In re Richardson*, App. D.C., 481 A.2d 473 (1984), be followed for temporary rehospitalization of insanity acquittees previously released under court order. *Brown v. United States*, App. D.C., 682 A.2d 1131 (1996).

The procedures for temporary rehospitalization of criminal acquittees and civil committees need not be the same in order to meet the requirements of due process. *Brown v. United States*, App. D.C., 682 A.2d 1131 (1996).

Situational differences between acquittees and committees justify differences in burden and standard of proof. — The differences in allocation of the burden of proof and the standard of proof used in confinement following an acquittal by reason of insanity under § 24-301(d) and civil commitment under subsection (b) of this section are justified by reason of the situational differences between acquittees and committees. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Petitioner may introduce evidence relating to conduct not alleged in petition. — Petitioner for involuntary commitment may introduce relevant and otherwise admissible evidence relating to not only the alleged conduct outlined in the petition, but also to the alleged conduct testified about during the hearing before the Commission, the findings of fact and medical conclusions contained in the report, and to the recommendations issued by the Commission. *In re Taylor*, 112 WLR 1629 (Super. Ct.).

Use of statements of prior hospitalization for mental illness in later commitment hearings. — See *In re Samuels*, App. D.C., 507 A.2d 150 (1986).

"Injure" defined case-by-case. — "Injure" must be defined by trial judge on case-by-case basis. *In re Gahan*, App. D.C., 531 A.2d 661 (1987).

"Injure" implies element of dangerousness. — In this section, the word "injure" at least implies an element of dangerousness. *In re Mendoza*, App. D.C., 433 A.2d 1069 (1981).

Court relies on written record. — To the maximum extent possible, the court will rely on a written record, rather than the personal testimony of treating physicians, in reviewing the treatment plan for a patient involuntarily committed because of mental illness. *In re Jones*, 338 F. Supp. 428 (D.D.C. 1972).

Commitment proceedings are not clearly adversarial in nature. — Unlike criminal proceedings which are clearly adversarial in nature, the interests of the individual and the state in involuntary civil commitment proceedings should be congruent. *In re Snowden*, App. D.C., 423 A.2d 188 (1980).

Proper issues for examination by jury in commitment proceeding. — In a civil commitment proceeding, the jury may properly examine only the nature of the alleged mental illness and appellant's past conduct in assessing the likelihood of his causing future injury. *In re Mendoza*, App. D.C., 433 A.2d 1069 (1981).

Where, during voir dire, the government advised the prospective panel of jurors that they would decide whether defendant should have further treatment, even though this remark misstated the specific function of a civil commitment jury, in light of the judge's closing instructions correctly advising the jury of their proper statutory duty, and in light of the fact that the remark was only mentioned once before the jury was impaneled, the error was harmless. *In re Artis*, App. D.C., 615 A.2d 1148 (1992).

Consideration of a person's likely danger to the community is appropriate in commitment proceedings. *Rouse v. Cameron*, 387 F.2d 241 (D.C. Cir. 1967).

Potential for treatment is inappropriate consideration. — Treatability of one having a

mental disease or defect is not an appropriate consideration. *Rouse v. Cameron*, 387 F.2d 241 (D.C. Cir. 1967).

Commission of criminal acts does not give rise to a presumption of dangerousness. — While prior criminal conduct is relevant to determining whether a person is mentally ill or dangerous, it cannot justify the denial of procedural safeguards for such a determination. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968).

Admission of testimony not prejudicial error. — Even if the admission of certain testimony by psychiatrists, in a proceeding in which the patient was committed under this chapter, was error on the ground that the testimony was hearsay, violating the patient's rights to confrontation, such an error was not prejudicial, in view of other sufficient evidence warranting a finding that the patient was likely to injure himself or others. *In re Penn*, 443 F.2d 663 (D.C. Cir. 1970).

Evidence sufficient to find mental illness. — In view of a psychiatrists' testimony that the person was suffering from a condition which substantially impaired his health, that the condition was interrelated with his mental deficiency, and that his antisocial behavior occurred as a result and manifestation of an underlying mental illness, there was sufficient evidence for the jury to find that the person, in addition to being mentally deficient, was suffering from a mental illness. *In re Alexander*, 372 F.2d 925 (D.C. Cir. 1966).

The record amply supported the jury's decision that appellant was both mentally ill and likely to injure herself where the testimony of three government witnesses consistently echoed appellant's unrefuted history of mental illness; her inability — or refusal — to maintain a needed regimen of daily medication; an alarming disregard for personal hygiene; and an apparent incapacity to appreciate the potentially fatal implications of her conditions. *In re Artis*, App. D.C., 615 A.2d 1148 (1992).

Right to jury decision. — Under this section a prospective civil committee has the right to have a jury decide whether his condition meets the requirements for civil commitment. *United States v. Henry*, 600 F.2d 924 (D.C. Cir. 1979).

Factor arguable to jury not necessarily required as instruction. — Whether the patient in a commitment proceeding has recently committed an overt act which indicates future dangerousness is a factor which may be argued to the jury, but there is no requirement of an instruction to that effect. *In re Snowden*, App. D.C., 423 A.2d 188 (1980).

Instruction on issue of "injury" on case-by-case basis. — The term "injure" is sufficiently vague, and the panoply of aberrant conduct requiring civil commitment sufficiently

unforeseeable, that the only guidance for judges is to require them to tailor the instruction to the jury on the issue of "injury" on a case-by-case basis, in the common-law tradition. *In re Mendoza*, App. D.C., 433 A.2d 1069 (1981).

Sufficiency of jury instructions. — To the extent that a court's instruction reflected the government trial counsel's view that the mental deficiency, in and of itself, constituted a mental illness, the instruction was improper, but when the court's charge was taken in its entirety, the jury had been clearly and properly informed that they could not commit a person simply because of his mental deficiency. *In re Alexander*, 372 F.2d 925 (D.C. Cir. 1966).

A jury, hearing the psychiatrist's testimony of the dangerousness of a person sought to be committed following an acquittal on the criminal charge due to a finding of insanity, should be informed of the various components of such term, to what extent it reflects a predicting of behavior, and whether it is prediction of an occurrence of a kind of behavior that, however deviant, might be considered by the jury not to be dangerous. *United States v. Ashe*, 478 F.2d 661 (D.C. Cir. 1973).

A court may properly instruct a jury on verdict consequences in civil commitment proceedings in light of the broader responsibility accorded the factfinder in these cases. *In re Bumper*, App. D.C., 441 A.2d 975 (1982).

The court should instruct the jury regarding the alternative treatment available to one who is not, as well as one who is, committed. *In re Bumper*, App. D.C., 441 A.2d 975 (1982).

Post-hearing examinations permissible. — Psychiatrist did not exceed his statutory authority as Commission psychiatrist by conducting post-hearing examinations. *In re Morrow*, App. D.C., 463 A.2d 689 (1983).

Testimony as to post-hearing examinations. — Permitting Commission psychiatrist to testify as to his post-hearing examinations of respondent in civil commitment case did not violate her rights under this chapter and did not require declaration of mistrial. *In re Morrow*, App. D.C., 463 A.2d 689 (1983).

Authorization of summary rehospitalization. — Trial court may authorize outpatient's summary rehospitalization in certain situations, provided the patient is detained only temporarily, if the hospital provides the court with an affidavit, within 24 hours of the patient's return, reciting the reasons for his return and provides the patient's counsel with a copy of the affidavit. *United States v. Ellerbee*, App. D.C., 481 A.2d 473 (1984).

Civil commitment pending subsequent criminal proceedings held proper. — A person may be classified as mentally ill and held under civil commitment proceedings while subsequent criminal proceedings are brought

against him. In re Nelson, 112 WLR 1869 (Super. Ct. 1984).

Review of Commission's actions. — Absent a jury demand, the court at the hearing had the authority to evaluate the Commission hearing and to reject the Commission report. In re Walls, 442 F.2d 749 (D.C. Cir. 1971).

Vacation of illegal commitment orders. — A person whose 2 commitments to a mental hospital were procedurally defective is entitled to a declaration of illegality of such commitments and to a vacation of the respective commitment orders. In re Brown, 68 F.R.D. 172 (D.D.C. 1975).

Cited in Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966), cert. denied, 382 U.S. 863, 15 L. Ed. 2d 100, 86 S. Ct. 126 (1965); Martin v. Martin,

App. D.C., 270 A.2d 141 (1970); United States v. Brown, 478 F.2d 606 (D.C. Cir. 1973); In re Ballay, 482 F.2d 648 (D.C. Cir. 1973); In re Hodges, App. D.C., 325 A.2d 605 (1974), overruled on other grounds, In re Nelson, App. D.C., 408 A.2d 1233 (1979); United States v. Wright, 511 F.2d 1311 (D.C. Cir. 1975); In re Lomax, App. D.C., 386 A.2d 1185 (1978); Williams v. Meredith, App. D.C., 407 A.2d 569 (1979); Thomas v. United States, App. D.C., 418 A.2d 122 (1980); Jones v. United States, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983); In re Hanna, 111 WLR 497 (Super. Ct.); Reese v. United States, App. D.C., 614 A.2d 506 (1992); In re Gaither, App. D.C., 626 A.2d 920 (1993); In re Katz, App. D.C., 638 A.2d 684 (1994).

§ 21-546. Periodic requests for examination of hospitalized patient; procedure for examination and detention or release; petition to court.

A patient hospitalized pursuant to a court order obtained under section 21-545, or his attorney, legal guardian, spouse, parent, or other nearest adult relative, may, upon the expiration of 90 days following the order and not more frequently than every 6 months thereafter, request, in writing, the chief of service of the hospital in which the patient is hospitalized, to have a current examination of his mental condition made by one or more physicians or qualified psychologists. If the request is timely it shall be granted. The patient may, at his own expense, have a duly qualified physician or qualified psychologist participate in the examination. In the case of such a patient who is indigent, the Department of Human Services shall, upon the written request of the patient, assist him in obtaining a duly qualified physician or qualified psychologist to participate in the examination in the patient's behalf. A physician or qualified psychologist so obtained by an indigent patient shall be compensated for his services out of any unobligated funds of Department of Human Services in an amount determined by it to be fair and reasonable. If the chief of service, after considering the reports of the physicians or qualified psychologists conducting the examination, determines that the patient is no longer mentally ill to the extent that he is likely to injure himself or other persons if not hospitalized, the chief of service shall order the immediate release of the patient. However, if the chief of service, after considering the reports, determines that the patient continues to be mentally ill to the extent that he is likely to injure himself or other persons if not hospitalized, but one or more of the physicians or qualified psychologists participating in the examination reports that the patient is not mentally ill to that extent, the patient may petition the court for an order directing his release. The petition shall be accompanied by the reports of the physicians or qualified psychologists who conducted the examination of the patient. (Sept. 14, 1965, 79 Stat. 756, Pub. L. 89-183, § 1; 1973 Ed., § 21-546; Feb 24, 1984, D.C. Law 5-48, § 11(a)(13), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(h), 35 DCR 147.)

Section references. — This section is referred to in §§ 21-547, 21-549, and 21-589.

Legislative history of Law 5-48. — See note to § 21-501.

Legislative history of Law 7-104. — See note to § 21-501.

"Mentally ill." — A person is "mentally ill" if he suffers from an abnormal condition of the mind that substantially affects his mental or emotional processes, and substantially impairs his behavioral control. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Diagnosis as mentally ill and retarded. — Position of chief of service that a patient is both mentally ill and retarded and thus presents a dual problem does not suggest release under the Ervin Act (§ 21-501 et seq.) merely because he is also mentally retarded and thus committable under the Retarded Citizens Act (§ 6-1901 et seq.). In re *Hanna*, App. D.C., 484 A.2d 537 (1984).

Questions of fact and law. — The presence of an abnormal mental condition, and the extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

The likelihood of future misconduct of the patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Procedural differences for civil and criminal commitments. — The standard for release is the same, regardless of whether a person is civilly committed or committed following the imposition of an insanity defense by the trial court, or committed after pleading not guilty by reason of insanity, however, there is a difference in the procedure for initial commitment, since the civil committee has the right to a jury trial on the questions of mental illness and dangerousness; the criminal acquittee, who has entered a plea of not guilty by reason of insanity, is committed without a prior hearing, and every 6 months thereafter is entitled only to a bench trial at which he, and not the government, bears the burden of proof. *Walls v. United States*, App. D.C., 601 A.2d 54 (1991).

Discretion of hospital administrators. — Efficient hospital administration requires the courts to accord the administrators much broader discretion in determining the appropri-

ateness of an intra-hospital disposition of a mentally ill person than in assaying the need for the hospitalization. However, the additional restrictions beyond those necessarily entailed by the hospitalization are as much in need of justification as any other deprivations of liberty, and the judicial review of internal decisions is not precluded. *Covington v. Harris*, 419 F.2d 617 (D.C. Cir. 1969).

Entitlement to hearing. — Doctor's report supported a finding that although party was not dangerous to herself or others in a custodial setting, this did not mean that she would not be dangerous in the event she were released; doctor's report did not entitle party to a hearing pursuant to subsection (a). In re *Dow*, App. D.C., 663 A.2d 1214 (1995).

Expert witness requirement. — The requirement that a patient support her petition with expert opinion is constitutionally sufficient, and it obviates the need for hearings which would serve no useful purpose. In re *Dow*, App. D.C., 663 A.2d 1214 (1995).

Review of administrator's decision. — When the patient is seeking a complete release from confinement, the scope of judicial review of the hospital administrator's decision is broader and the function of the court is not simply to review the hospital's decision for unreasonableness, but rather itself to decide the question of whether the present status of the patient is such that a continued confinement is justifiable. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Scope of judicial review. — The court has no authority to review the chief of service's determination on the merits of release of patient or to make an independent determination as to whether a patient was mentally ill, since release is discretionary with the hospital, but the court is limited to determining whether the hospital's assessment is "permissible and reasonable," i.e., whether the decision is based solely on statutory grounds and not motivated by concerns incompatible with the aims of the Ervin Act (§ 21-501 et seq.). In re *Hanna*, App. D.C., 484 A.2d 537 (1984).

Basis for habeas corpus. — If a patient's petition for habeas corpus is based solely on the grounds relating, not to present status, but rather to specific past events, the question of whether a new hearing is required is equivalent to that in the case of a prisoner seeking a release under habeas corpus or equivalent process. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Deferral of action on habeas petition. — If adequate internal remedies of a hospital are in process at the time the patient files a habeas corpus petition, the proper procedure is to delay

the action on the petition rather than to dismiss it. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

If a patient is undergoing a medical examination at the time his petition for habeas corpus is filed, the court should defer action on the petition pending the hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, the court should proceed to a determination of the issues. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Delay in hearing habeas corpus petition. — Delay of a hearing on a patient's petition for habeas corpus is not justified by the

patient's failure to avail himself of his right to be examined by an outside psychiatrist. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Cited in *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968); *Matthews v. Hardy*, 420 F.2d 607 (D.C. Cir. 1969), cert. denied, 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423 (1970); *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983); *In re Hanna*, 111 WLR 497 (Super. Ct.); *In re Mills*, App. D.C., 467 A.2d 971 (1983); *In re James*, App. D.C., 507 A.2d 155 (1986); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995); *Brown v. United States*, App. D.C., 682 A.2d 1131 (1996).

§ 21-547. Judicial determination of petition filed under section 21-546; order; physicians and qualified psychologists as witnesses.

In considering a petition filed under section 21-546, the court shall consider the testimony of the physicians or qualified psychologists who participated in the examination of the patient, and the reports of the physicians or qualified psychologists accompanying the petition. After considering the testimony and reports, the court shall either (1) reject the petition and order the continued hospitalization of the patient, or (2) order the chief of service to immediately release the patient. A physician or qualified psychologist participating in the examination shall be a competent and compellable witness at any trial or hearing held pursuant to this chapter. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; 1973 Ed., § 21-547; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(14), 30 DCR 5778.)

Section references. — This section is referred to in §§ 21-549 and 21-589.

Legislative history of Law 5-48. — See note to § 21-501.

Cited in *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968); *Matthews v. Hardy*, 420 F.2d 607 (D.C. Cir. 1969), cert. denied, 397 U.S. 1010, 90

S. Ct. 1231, 25 L. Ed. 2d 423 (1970); *Thomas v. United States*, App. D.C., 418 A.2d 122 (1980); *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983); *In re Stokes*, App. D.C., 546 A.2d 356 (1988); *Walls v. United States*, App. D.C., 601 A.2d 54 (1991).

§ 21-548. Periodic examinations by hospital authorities; release.

The chief of service of a public or private hospital shall, as often as practicable, but not less often than every six months, examine or cause to be examined each patient admitted to a hospital pursuant to this subchapter and if he determines on the basis of the examination that the conditions which justified the involuntary hospitalization of the patient no longer exist, the chief of service shall immediately release the patient. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; 1973 Ed., § 21-548.)

Section references. — This section is referred to in §§ 21-549 and 21-589.

Basis for confinement. — Confinement of the mentally ill rests upon a basis substantially different from that which supports the confinement of those convicted of a crime since confinement of the mentally ill depends not only upon the validity of an initial commitment, but also, upon the continuing status of the patient. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Administrative remedies. — The administrative remedy for a patient that must be exhausted prior to petition for habeas corpus is the examination, rather than the request for an examination, and if the examination has been conducted within 6 months prior to the habeas corpus petition, the administrative remedy is exhausted. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

"Mentally ill." — A person is "mentally ill" if he suffers from an abnormal condition of the mind that substantially affects mental or emotional processes, and substantially impairs behavioral control. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Diagnosis as mentally ill and retarded. — Position of chief of service that a patient is both mentally ill and retarded and thus presents a dual problem does not suggest release under the Ervin Act (§ 21-501 et seq.) merely because he is also mentally retarded and thus committable under the Retarded Citizens Act (§ 6-1901 et seq.). In *re Hanna*, 484 A.2d 537 (1984).

Questions of fact and law. — The presence of an abnormal mental condition, and the ex-

tent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

The likelihood of future misconduct of the mental patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency, are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Scope of judicial review. — The court has no authority to review the chief of service's determination on the merits of release of patient or to make an independent determination as to whether a patient was mentally ill, since release is discretionary with the hospital, but the court is limited to determining whether the hospital's assessment is "permissible and reasonable," i.e., whether the decision is based solely on statutory grounds and not motivated by concerns incompatible with the aims of the Ervin Act (§ 21-501 et seq.). In *re Hanna*, App. D.C., 484 A.2d 537 (1984).

Cited in *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968); In *re Nelson*, App. D.C., 408 A.2d 1233 (1979); *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983); In *re Hanna*, 111 WLR 497 (Super. Ct.); *Sanderlin v. United States*, 794 F.2d 727 (D.C. Cir. 1986); *Walls v. United States*, App. D.C., 601 A.2d 54 (1991); In *re Dow*, App. D.C., 663 A.2d 1214 (1995); *Brown v. United States*, App. D.C., 682 A.2d 1131 (1996).

§ 21-549. Preservation of other rights to release.

Sections 21-546 to 21-548 do not prohibit a person from exercising a right presently available to him for obtaining release from confinement, including the right to petition for a writ of habeas corpus. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; 1973 Ed., § 21-549.)

Section references. — This section is referred to in § 21-589.

§ 21-550. Surety.

The court in its discretion may require a petitioner under this subchapter to file an undertaking with surety to be approved by the court in such amount as the court deems proper, conditioned to save harmless the respondent by reason of costs incurred, including attorney's fees, if any, and damages suffered by the

respondent, as a result of any action under this subchapter. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; 1973 Ed., § 21-550.)

Section references. — This section is referred to in § 21-589.

§ 21-551. Nonresidents.

(a) If a person ordered committed to a public hospital by the court pursuant to section 21-545 is found by the Commission, subject to a review by the court, not to be a resident of the District of Columbia, and to be a resident of another place, he shall be transferred to the State of his residence if an appropriate institution of that State is willing to accept him. If the person is an indigent, the expense of transferring him, including the traveling expenses of necessary attendants, shall be borne by the District of Columbia.

(b) For the purposes of this section, “resident of the District of Columbia” means a person who has maintained his principal place of abode in the District of Columbia for more than one year immediately prior to the filing of the petition referred to in subsection (a) of section 21-541. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; 1973 Ed., § 21-551.)

Section references. — This section is referred to in §§ 21-589 and 21-906.

Constitutionality of section. — This section may not be used to bar the claim of a newly-arrived resident for medical public assistance since to do so would be unjustifiably discriminatory in violation of the Fifth Amendment right to due process. *District of Columbia v. H.J.B.*, App. D.C., 359 A.2d 285 (1976).

Residency established for medical treatment at public expense. — Where a District of Columbia corporation was the custodian of a mentally retarded orphan, who was brought to the United States for the purpose of adoption, the orphan acquired a colorable claim to the

District of Columbia “residence” for purpose of medical treatment at public expense once she was placed directly in the custody of the officials operating from the corporation’s District of Columbia office, absent evidence that the transfer from the corporation’s New York office was intended as anything less than an indefinite arrangement for her care or some residue of a permanent attachment to another jurisdiction; therefore, the District is liable for her care. *District of Columbia v. H.J.B.*, App. D.C., 359 A.2d 285 (1976).

Cited in *In re Morrow*, App. D.C., 463 A.2d 689 (1983); *In re Myrick*, App. D.C., 624 A.2d 1222 (1993).

Subchapter V. Right to Communication; Exercise of Other Rights.

§ 21-561. Mail privileges; censored mail; return to sender; visiting hours.

(a) A person hospitalized in a public or private hospital pursuant to this chapter may:

(1) communicate by sealed mail or otherwise with an individual or official agency inside or outside the hospital; and

(2) receive uncensored mail from his attorney, personal physician, or personal qualified psychologist.

(b) All incoming mail or communications other than mail or communications referred to in subsection (a) of this section may be read before being delivered to the patient, if the chief of service believes the action is necessary

for the medical welfare of the patient who is the intended recipient. Mail or other communication which is not delivered to the patient for whom it is intended shall be immediately returned to the sender.

(c) This section does not prohibit the administrator from making reasonable rules regarding visitation hours and the use of telephone and telegraph facilities. (Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1; 1973 Ed., § 21-561; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(15), 30 DCR 5778.)

Legislative history of Law 5-48. — See note to § 21-501.

§ 21-562. Medical and psychiatric care and treatment; records.

A person hospitalized in a public hospital for a mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment. The administrator of each public hospital shall keep records detailing all medical and psychiatric care and treatment received by a person hospitalized for a mental illness and the records shall be made available, upon that person's written authorization, to his attorney, personal physician, or personal qualified psychologist. The records shall be preserved by the administrator until the person has been discharged from the hospital. (Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1; 1973 Ed., § 21-562; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(16), 30 DCR 5778.)

Section references. — This section is referred to in § 6-2016.

Legislative history of Law 5-48. — See note to § 21-501.

Right to treatment. — One involuntarily committed to a hospital after having been acquitted of an offense, by reason of insanity, has a right to treatment. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

Remedy for inadequate treatment. — Habeas corpus relief would be available to one involuntarily committed to a public hospital but who is not receiving reasonably suitable and adequate treatment, where the lack of such treatment could not be justified by a lack of staff or facilities. *Millard v. Cameron*, 373 F.2d 468 (D.C. Cir. 1966).

The alleged denial of a patient's right to treatment would require a remand of the habeas corpus petition for a new hearing. *Dobson v. Cameron*, 383 F.2d 519 (D.C. Cir. 1967).

Burden on hospital. — On the issue of the right to treatment of one involuntarily committed, the hospital need not show that the treatment will cure or improve him but only that there is a bona fide effort to do so, and this requires the hospital to show that initial and periodic inquiries are made into the needs and conditions of a patient with a view to providing suitable treatment for him, and that the program provided is suited to his particular needs.

Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966).

The hospital may be required to show that it is making "a bona fide effort" to cure or improve the patient and that the treatment provided "is suited to his particular needs." *Covington v. Harris*, 419 F.2d 617 (D.C. Cir. 1969).

Failure to provide suitable and adequate treatment. — The continuing failure to provide suitable and adequate treatment cannot be justified by a lack of staff or facilities. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

Custodial care unjustified. — One hospitalized involuntarily cannot be relegated to an unattended ward while the hospital officials maintain the pretext that he is being observed and diagnosed; custodial care is no more justified by labeling it "diagnosis" than by labeling it "treatment." *In re Curry*, 452 F.2d 1360 (D.C. Cir. 1971).

Hospital's reasonable opportunity to initiate treatment. — If the court finds that a mandatorily committed patient is in custody in violation of the Constitution and laws, for failure to receive treatment, it may allow the hospital to have a reasonable opportunity to initiate the treatment, but if the opportunity for treatment has been exhausted or is otherwise inappropriate, conditional or uncondi-

tional release may be in order. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

Disclosure of hospital records. — A hospital to which a mentally ill person has been civilly committed may not disclose the hospital records to outside parties without the patient's consent but this does not imply that it is forbidden to introduce them in a court where they are relevant to the patient's contentions on habeas corpus. *Covington v. Harris*, 419 F.2d 617 (D.C. Cir. 1969).

When a patient is committed to a public hospital for treatment, the hospital has a statutory obligation to make its records available to his counsel and to his personal physician. *United States v. Schappel*, 445 F.2d 716 (D.C. Cir. 1971).

Sufficiency of hospital records. — When a patient at a public hospital seeks to challenge the legality of decisions regarding the treatment accorded him or the manner of his confinement, the hospital may not rely upon information or explanations not in the patient's hospital record to justify decision; records on their face must be adequate to demonstrate the

propriety of the challenged decisions and may not be rehabilitated by a subsequent demonstration in court. *Williams v. Robinson*, 432 F.2d 637 (D.C. Cir. 1970).

Scope of judicial review. — Where the decision of the hospital's administration, challenged by patient, relates essentially to an internal administration of the hospital such as the patient's right to adequate treatment, the transfer to a less restrictive ward, or a conditional release, the judicial review is limited to determining whether the administrator of the hospital has made a permissible and reasonable decision in view of relevant information and within the broad range of discretion. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Cited in *United States v. Ammidown*, 341 F. Supp. 1355 (D.D.C. 1972), aff'd, 509 F.2d 538 (D.C. Cir. 1975); *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979); *In re Nelson*, App. D.C., 408 A.2d 1233 (1979); *In re D.W.G.*, 115 WLR 2097 (Super. Ct.).

§ 21-563. Use of mechanical restraints; record of use.

A mechanical restraint may not be applied to a patient hospitalized in a public or private hospital for a mental illness unless the use of restraint is prescribed by a physician or qualified psychologist. If so prescribed, the restraint shall be removed whenever the condition justifying its use no longer exists. A use of a mechanical restraint, together with the reasons therefor, shall be made a part of the medical record of the patient. (Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1; 1973 Ed., § 21-563; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(17), 30 DCR 5778.)

Legislative history of Law 5-48. — See note to § 21-501.

§ 21-564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964.

(a) A patient hospitalized pursuant to this chapter may not by reason of the hospitalization, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, and hold a driver's license, unless the patient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. If the chief of service of the public or private hospital in which the patient is hospitalized is of the opinion that the patient is unable to exercise any of the rights referred to in this section, the chief of service shall immediately notify the patient and the patient's attorney, legal guardian, spouse, parents, or other nearest known adult relative, the Superior Court of the District of Columbia, the Commission on Mental Health, and the Mayor of the District of Columbia of that fact.

(b) A person in the District of Columbia who, by reason of a judicial decree ordering his hospitalization entered prior to September 15, 1964, is considered to be mentally incompetent and is denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold a driver's license solely by reason of the decree, shall, upon the expiration of the one-year period immediately following September 15, 1964, be deemed to have been restored to legal capacity unless, within the one-year period, affirmative action is commenced to have the person adjudicated mentally incompetent by a court of competent jurisdiction; provided, however, that in those cases in which a committee has heretofore been appointed and the committee'ship has not been terminated by court action, such committee shall continue to act under the supervision of the Superior Court of the District of Columbia under its equity powers. (Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(3), (4); 1973 Ed., § 21-564.)

Commitment does not automatically render person incompetent for most purposes. *Cameron v. Mullen*, 387 F.2d 193 (D.C. Cir. 1967).

Rights of patients hospitalized. — Only those hospitalized pursuant to this chapter are guaranteed, by the Civil Rights Act of 1964, the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold a driver's license. *Cameron v. Mullen*, 387 F.2d 193 (D.C. Cir. 1967).

Scope of hospital's duty. — The hospital's only duty to protect the incompetent person is that its chief of service must notify the patient, his attorney, legal guardian, certain relatives, the Superior Court of the District of Columbia, the Commission on Mental Health, and the Mayor of the District of Columbia if he is of the

opinion that the patient is unable to exercise any of his rights. *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979).

Adjudication of incompetency required. — A hospital is prevented by this section from treating its patients as wards prior to an adjudication of incompetency. *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979).

Separate competency hearing required. — This section requires that competency be determined in a separate hearing from one ordering commitment to a mental hospital. *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979).

Cited in *In re Boyd*, App. D.C., 403 A.2d 744 (1979); *In re Morris*, App. D.C., 482 A.2d 369 (1984); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-565. Statement of release and adjudication procedures and of other rights.

Upon the admission of a person to a hospital under a provision of this chapter, the administrator shall deliver to him, and to his spouse, parents, or other nearest known adult relative, a written statement outlining in simple, nontechnical language all release procedures provided by this chapter, setting out all rights accorded to patients by this chapter, and describing procedures provided by law for adjudication of incompetency and appointment of trustees or committees for the hospitalized person. (Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1; 1973 Ed., § 21-565.)

Cited in *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

*Subchapter VI. Miscellaneous Provisions.***§ 21-581. Proceedings instituted by Mayor of the District of Columbia.**

Proceedings instituted by the Mayor of the District of Columbia to determine the mental condition of an alleged indigent mentally ill person or a person alleged to be mentally ill, with homicidal or otherwise dangerous tendencies, shall be according to the provisions of subchapter IV of this chapter. (Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(5)(A); 1973 Ed., § 21-581.)

§ 21-582. Petitions, applications, or certificates of physicians or qualified psychologists.

(a) A petition, application, or certificate authorized under section 21-521 and subsection (a) of section 21-541 may not be considered if made by a physician or qualified psychologist who is related by blood or marriage to the alleged mentally ill person, or who is financially interested in the hospital in which the alleged mentally ill person is to be detained, or, except in the case of physicians or qualified psychologists employed by the United States or the District of Columbia, who are professionally or officially connected with the hospital.

(b) A petition, application, or certificate of a physician or qualified psychologist may not be considered unless it is based on personal observation and examination of the alleged mentally ill person made by the physician or qualified psychologist not more than 72 hours prior to the making of the petition, application, or certificate. The certificate shall set forth in detail the facts and reasons on which the physician or qualified psychologist based his opinions and conclusions. (Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1; 1973 Ed., § 21-582; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(18), 30 DCR 5778.)

Legislative history of Law 5-48. — See note to § 21-501.

Applicability. — Although this section speaks of petitions, applications, and certificates, a close reading makes clear that it applies only to applications under the emergency hospitalization provisions. In re Herman, App. D.C., 619 A.2d 958 (1993).

Construction. — Literal compliance with requirements of subsection (b) of this section is required. In re Watts, 110 WLR 2581 (Super. Ct. 1982).

Effect of violation of subsection (b). — A violation of subsection (b) is not an absolute bar to judicial consideration of a hospital's petition under §§ 21-524 and 21-525. In re Herman, App. D.C., 619 A.2d 958 (1993).

Section does not require more of petitioner who is also physician. — That the petitioner is a physician does not require more of him than would be required of a spouse who

has included with her petition a certificate of an examining physician. *Dobbs v. Duncan*, App. D.C., 458 A.2d 719 (1983).

Subsection (b) does not require petitioner who is physician and hospital superintendent to personally examine patient. — Subsection (b) of this section does not require that a petition filed by a hospital superintendent, who is himself a physician, and accompanied by a certificate of an examining physician also reflect that the superintendent personally examined the patient; it is enough that the superintendent's petition include separately the proper certificate of an examining physician. *Dobbs v. Duncan*, App. D.C., 458 A.2d 719 (1983).

Admissibility of psychiatric opinion on future dangerousness. — The fact that Congress has chosen to permit psychiatrists to offer opinions on the issue of future dangerousness in specifically prescribed instances does not

mean that absent specific legislation such testimony is admissible at other stages of those proceedings when Congress has chosen to remain silent. In *re Wilson*, 111 WLR 1065 (Super. Ct.).

Failure to comply with application for emergency hospitalization. — The failure to comply with requirements of an application for emergency hospitalization rendered appellant's

initial detention null and void and resulted in the case's remand to the trial court for entry of an order directing the hospital to correct its records to so indicate. In *re Morris*, App. D.C., 482 A.2d 369 (1984).

Cited in In *re Rosell*, App. D.C., 547 A.2d 180 (1988); In *re Reed*, App. D.C., 571 A.2d 801 (1990).

§ 21-583. Physicians, psychiatrists and qualified psychologists as witnesses.

A physician, psychiatrist or qualified psychologist making application or conducting an examination under this chapter is a competent and compellable witness at any trial, hearing or other proceeding conducted pursuant to this chapter and the physician- or psychologist-patient privilege is not applicable. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; 1973 Ed., § 21-583; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(19), 30 DCR 5778.)

Legislative history of Law 5-48. — See note to § 21-501.

§ 21-584. Witness fees.

Witnesses subpoenaed under the provisions of this chapter shall be paid the same fees and mileage as are paid to other witnesses in the court. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(6); 1973 Ed., § 21-584.)

§ 21-585. Confinement in jail prohibited.

A person apprehended, detained, or hospitalized under any provision of this chapter may not be confined in jail or in a penal or correctional institution. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; 1973 Ed., § 21-585.)

Section references. — This section is referred to in § 21-589.

Basis for court's determination as to patient's confinement. — Before a court can determine that a hospital's decision to confine a patient in a maximum security ward is, within its broad discretion, permissible and reason-

able in view of the relevant information, it must be able to conclude that the hospital has considered and found inadequate all relevant alternative dispositions within the hospital. *Covington v. Harris*, 419 F.2d 617 (D.C. Cir. 1969).

§ 21-586. Financial responsibility for care of hospitalized persons; judicial enforcement.

(a) The father, mother, husband, wife, and adult children of a mentally ill person, if of sufficient ability, and the estate of the mentally ill person, if the estate is sufficient for the purpose, shall pay the cost to the District of Columbia of the mentally ill person's maintenance, including treatment, in a hospital in which the person is hospitalized under this chapter. The Commission on Mental Health shall examine, under oath, the father, mother, husband,

wife, and adult children of an alleged mentally ill person whenever those relatives live within the District of Columbia, and ascertain their ability or the ability of the estate to maintain or contribute toward the maintenance of the mentally ill person. The relatives or estate may not be required to pay more than the actual cost to the District of Columbia of maintenance of the alleged mentally ill person.

(b) If a person made liable by subsection (a) of this section for the maintenance of a mentally ill person fails so to provide or pay for the maintenance, the court shall issue to him a citation to show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of the patient. The citation shall be served at least 10 days before the hearing thereon. If, upon the hearing, it appears to the court that the mentally ill person has not sufficient estate out of which his maintenance may properly be fully met and that he has relatives of the degree referred to in subsection (a) of this section who are parties to the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by the relatives of such sums as it finds that they are reasonably able to pay and as may be necessary to provide for the maintenance and treatment of the mentally ill person. The order shall require the payment of the sums to the District of Columbia treasurer annually, semiannually, quarterly, or monthly as the court directs. The treasurer shall collect the sums due under this section, and turn them into the Treasury of the United States to the credit of the District of Columbia. The order may be enforced against any property of the mentally ill person or of the person liable or undertaking to maintain him in the same way as if it were an order for temporary alimony in a divorce case. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; 1973 Ed., § 21-586.)

Section references. — This section is referred to in §§ 6-2022 and 21-542.

Applicability of section. — Since the right to reimbursement for the treatment of persons involuntarily confined to a public hospital for the mentally ill arises solely by this section, it is to be extended no further than necessary to permit those claims for recompense which are either specifically provided for in the enabling provision or are fairly inferable from its language in the natural course of interpretation. *District of Columbia v. H.J.B.*, App. D.C., 359 A.2d 285 (1976).

This section is controlling where child neglect proceedings are suspended because of the incompetency of the child. *District of Columbia v. H.J.B.*, App. D.C., 359 A.2d 285 (1976).

Continuing duty to support post-majority child. — There exists in the District of Columbia a common law duty on the part of parents to support their post-majority physically or mentally disabled children, however, given the significance the law attaches to one's reaching majority in ordinary circumstances, it is reasonable to require a reassessment of parental support obligations when a disabled child reaches the age of majority and such

reassessment should not be limited by the terms of the original support order. Different considerations come into play when parents face an almost indefinite obligation to support a disabled child such as, by way of illustration and not by way of limitation, the fact that the child's reaching the age of twenty-one may affect her eligibility or level of benefits under various governmental assistance programs, private insurance plans, or other programs intended to help meet the needs of those unable to care for themselves fully or the cost of vocational training to enable the child to gain some level of employment. *Nelson v. Nelson*, App. D.C., 548 A.2d 109 (1988).

A father is not legally required to support and educate adult child, except when the child is in need of public assistance or is hospitalized because of mental illness. *Spence v. Spence*, App. D.C., 266 A.2d 29 (1970).

Jurisdiction over claim for contribution to support. — Where the court ordered the wife committed to a mental hospital, the jurisdiction over any claim for contribution to her support remained in the court while she was confined in the hospital, but after she was released and placed in a foster home, the claim

for contribution to her support is to be brought in the Superior Court. *Randolph v. District of Columbia*, App. D.C., 333 A.2d 380 (1975).

Action for reimbursement by District not estopped. — Where the decedent's estate was sufficient to pay for his care, a hospital employee was without authority to relieve the decedent or his estate from this obligation, and the District of Columbia is not estopped from bringing an action for reimbursement by virtue of the conduct of the employee in purporting to contract to accept a lesser amount in satisfaction of an obligation. *District of Columbia v. Stewart*, App. D.C., 278 A.2d 117 (1971).

District obligated for nonresident's treatment costs. — The District of Columbia has an obligation to pay the costs of medical treatment of one whom the District has involuntarily civilly committed — in other words, of

one whom the District has deprived of liberty — whether or not that individual is a resident, until such time as another person or jurisdiction assumes responsibility for those costs. *In re Myrick*, App. D.C., 624 A.2d 1222 (1993).

The District of Columbia may not avoid the financial burden of caring for a mentally ill committee simply because it believes the federal government is ultimately responsible for that care under federal law. *In re Myrick*, App. D.C., 624 A.2d 1222 (1993).

Cited in *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979); *In re Watts*, 110 WLR 2581 (Super. Ct.); *Nelson v. Nelson*, 114 WLR 2437 (Super. Ct.); *Haymon v. Wilkerson*, App. D.C., 535 A.2d 880 (1987); *District of Columbia v. Gantt*, App. D.C., 558 A.2d 1120 (1989); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-587. Veterans' Administration and military hospital facilities.

This chapter does not require the admission of a person to a Veterans' Administration or military hospital facility unless the person is otherwise eligible for care and treatment in the facility. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; 1973 Ed., § 21-587.)

Purpose. — This section was intended as an exemption for Veterans' Administration and military facilities from the broad requirement of § 21-511, not as an affirmative requirement that other public hospitals transfer eligible patients to them. *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979).

No affirmative duty to transfer patient. — This section does not place an affirmative duty on a hospital to transfer a patient eligible for treatment at a Veterans' Administration hospital facility to that facility. *District of Columbia v. Moxley*, 471 F. Supp. 777 (D.D.C. 1979).

§ 21-588. Forms.

All applications and certificates for the hospitalization of a person in the District of Columbia under this chapter shall be made on forms approved by the Commission on Mental Health and furnished by it. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; 1973 Ed., § 21-588.)

Section references. — This section is referred to in § 21-589.

Cited in *Benson v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978).

§ 21-589. Persons hospitalized prior to September 15, 1964.

(a) Subject to subsection (b) of this section, the provisions of sections 21-546 to 21-551, subchapter V of this chapter and sections 21-585 and 21-588 apply to a person, who, on or after January 1, 1966, is a patient in a hospital in the District of Columbia by reason of having been declared insane or of unsound mind pursuant to a court order entered in a noncriminal proceeding prior to September 15, 1964.

(b) A request made by a patient referred to in subsection (a) of this section for an examination authorized by section 21-546 may be made on April 15, 1966, by the patient, or his attorney, legal guardian, spouse, parent, or other nearest adult relative, and not more frequently than every six months thereafter. (Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1; 1973 Ed., § 21-589.)

§ 21-590. Discharge as cured; restoration to legal status.

When a person adjudged to be of unsound mind in the District of Columbia who is committed to Saint Elizabeths Hospital, or any other institution, recovers his reason, and is discharged from the institution as cured, the Superintendent of Saint Elizabeths Hospital, or the official in charge of the institution where he has been under treatment and has been discharged, shall immediately file with the clerk of the Superior Court of the District of Columbia his sworn statement that, in his opinion, the person was not of unsound mind at the time of his discharge. The statement is sufficient to authorize the court to order the person restored to his former legal status as a person of sound mind. (Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(3); 1973 Ed., § 21-590.)

§ 21-591. Offenses and penalties.

Whoever:

(1) without probable cause for believing a person to be mentally ill:

(A) causes or conspires with or assists another person to cause the hospitalization, under this chapter, of the person first referred to; or

(B) executes a petition, application, or certificate pursuant to this chapter, by which he secures or attempts to secure the apprehension, hospitalization, detention, or restraint of the person first referred to;

or

(2) causes or conspires with or assists another person to cause the denial to a person of a right accorded to him by this chapter;

or

(3) being a physician, psychiatrist or qualified psychologist, knowingly makes a false certificate or application pursuant to this chapter as to the mental condition of a person —

shall be fined not more than \$5,000 or imprisoned not more than three years, or both. (Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1; 1973 Ed., § 21-591; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(20), 30 DCR 5778.)

Legislative history of Law 5-48. — See note to § 21-501.

§ 21-592. Return to hospital of an escaped mentally ill person.

When a person has been ordered confined in a hospital or institution for the mentally ill pursuant to this chapter and has left such hospital or institution

without authorization or has failed to return as directed, the court which ordered confinement shall, upon the request of the administrator of such hospital or institution, order the return of such person to such hospital or institution. (July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(c)(7)(A); 1973 Ed., § 21-592.)

Cross references. — As to rewards for apprehension of fugitives from welfare institutions, see § 24-426.

Cited in In re Plummer, App. D.C., 608 A.2d 741 (1992); In re Reynard, App. D.C., 616 A.2d 1262 (1992).

CHAPTER 7. PROPERTY OF MENTALLY ILL PERSONS.

Sec.

21-701 to 21-706. [Repealed].

§§ 21-701 to 21-706. Definition; property subject to liens; property subject to executory contract; contract for sale by adult in behalf of himself and mentally ill person; ancillary guardian of non-resident mentally ill person; suits by ancillary guardian.

Repealed. Feb. 28, 1987, D.C. Law 6-204, § 3, 34 DCR 632.

Legislative history of Law 6-204. — Law 6-204, the “District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986,” was introduced in Council and assigned Bill No. 6-7, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act. No. 6-263 and transmitted to both Houses of Congress for its review.

CHAPTER 9. MENTALLY ILL PERSONS FOUND IN
CERTAIN FEDERAL RESERVATIONS.

Sec.	Sec.
21-901. Definition.	committed or apprehended under sections 21-902 and 21-903.
21-902. Commitments by special commissioners of certain district courts.	21-906. Examinations; adjudications; laws applicable; expense of care and treatment.
21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings.	21-907. Transfer of military personnel.
21-904. Admission upon written application; right of release.	21-908. Care in a Veterans' Administration facility.
21-905. Superintendent to receive persons	21-909. Payment of expenses of transfers.

§ 21-901. Definition.

As used in this chapter, "mentally ill person" has the same meaning as that given to the term by section 21-501. (Sept. 14, 1965, 79 Stat. 763, Pub. L. 89-183, § 1; 1973 Ed., § 21-901.)

Cited in Bension v. Meredith, 455 F. Supp. 662 (D.D.C. 1978).

§ 21-902. Commitments by special commissioners of certain district courts.

(a) A United States commissioner specially designated by the United States District Court for the Eastern District of Virginia or by the United States District Court for the District of Maryland may commit to Saint Elizabeths Hospital, for observation and diagnosis, a person found in a place over which the United States has exclusive or concurrent jurisdiction in Arlington County, Fairfax County, Loudoun County or the city of Alexandria, in the State of Virginia, or in Montgomery County or Prince Georges County in the State of Maryland, who is alleged, and is believed by the commissioner, to be a mentally ill person. A United States commissioner specially designated by the United States District Court for the District of Columbia has like jurisdiction and authority in the case of any person temporarily detained in Saint Elizabeths Hospital, pursuant to section 21-903.

(b) A commitment provided for by subsection (a) of this section shall be for not more than 30 days and may be made only after a hearing before the commissioner upon:

(1) the testimony under oath of at least two witnesses as to their belief that the person is a mentally ill person; and

(2) the testimony under oath or affidavit of two physicians, at least one of whom is skilled in the treatment and diagnosis of nervous and mental disorders, that they have examined the alleged mentally ill person and believe him to be a mentally ill person and not fit to remain at liberty and go unrestrained, and that he should be in custody in a hospital for the treatment of mental or nervous disorders for his own safety and welfare and for the preservation of the peace and good order.

(c) The head of the agency of the United States in control of the place where a person is apprehended for a hearing pursuant to this section shall forthwith notify the spouse or a near relative or friend of the person so apprehended whose address is known to him or can by reasonable inquiry be ascertained by him. In the case of a person described by section 21-907, the agency head shall notify the head of the department having jurisdiction over the service to which the person belongs.

(d) The agency of the United States in control of the place where a person is apprehended for a hearing pursuant to this section may employ physicians for the purpose and pay compensation for their services and pay expenses of witnesses in the proceedings out of funds available therefor. Physicians who are officers or employees of the United States or who are members of the armed forces of the United States may render the services without additional compensation. (Sept. 14, 1965, 79 Stat. 763, Pub. L. 89-183, § 1; 1973 Ed., § 21-902.)

Section references. — This section is referred to in §§ 21-903, 21-904, 21-905, and 21-906.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States commissioner and established in place thereof the Office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969.

Purpose. — This is an interim detention statute of which treatment is obviously not an aim. *Bension v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978).

Exhaustion doctrine inapplicable to suit challenging statute. — This federal reservation statute, although appearing in the District of Columbia Code, lacks any other attribute of a state statute within the meaning of the exhaustion doctrine, so that there was no reason for the federal district court to defer to the local judiciary in an action challenging the constitu-

tionality of proceedings under the statute. *Bension v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978).

Detainee must be mentally ill and likely to injure himself or others. — This section must be construed to require a magistrate authorizing commitment to find probable cause to believe not only that the detainee is mentally ill, but also that he is likely to injure himself or others if not detained. *Bension v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978).

Release of detainee did not render moot case challenging constitutionality of commitment. — The release of the detainee did not render moot his case challenging the constitutionality of his commitment where collateral legal consequences might have resulted from his detention and the issue was capable of repetition, yet evading review on account of the short commitment period. *Bension v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978).

Cited in *Medynski v. Margolis*, 389 F. Supp. 743 (D.D.C. 1975); *In re Melton*, App. D.C., 597 A.2d 892 (1991).

§ 21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings.

(a) An officer or employee of the United States authorized to make arrests, and a guard or watchman employed by the United States, may apprehend and detain a person whom he believes to be a mentally ill person and found in a place specified by section 21-902, and, except as provided by section 21-904, bring the person for a hearing before a United States commissioner for the district where the person was apprehended, and designated as provided by section 21-902. When an immediate hearing before a commissioner cannot be had, the officer or employee may take the person to Saint Elizabeths Hospital. The Superintendent of Saint Elizabeths Hospital may detain the person pending a hearing before a United States commissioner for the District of

Columbia, designated as provided by section 21-902, for a period not exceeding 72 hours.

(b) The United States commissioner specified by subsection (a) of this section shall hold a hearing as promptly as practicable after the apprehension of a person pursuant to that subsection and in any event not later than 72 hours thereafter. The hearing shall be conducted at Saint Elizabeths Hospital if the Superintendent of the hospital certifies that in his opinion it would be prejudicial to the health of the person or unsafe to produce him at a hearing elsewhere. If, after a hearing at a place other than Saint Elizabeths Hospital, the commissioner commits a person to Saint Elizabeths Hospital, an officer, employee, guard, or watchman specified by subsection (a) of this section may transport the person to Saint Elizabeths Hospital in accordance with the order of the commissioner. (Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1; 1973 Ed., § 21-903.)

Section references. — This section is referred to in §§ 21-902, 21-905, and 21-906.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States commissioner and established in place thereof the Office of United States magistrate. The Act became operative in the

District of Columbia on June 27, 1969, when 2 United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969.

Cited in *Medynski v. Margolis*, 389 F. Supp. 743 (D.D.C. 1975); *Bension v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978).

§ 21-904. Admission upon written application; right of release.

A person in a place specified by section 21-902 may, upon his written application, be admitted for observation and diagnosis to Saint Elizabeths Hospital in the discretion of the Superintendent of the hospital for a period not exceeding 30 days. If, after admission to Saint Elizabeths Hospital, he expresses a desire for release from the hospital, he shall be released within 72 hours thereafter, unless proceedings for his adjudication as a mentally ill person have been instituted as provided for by section 21-906. (Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1; 1973 Ed., § 21-904.)

Section references. — This section is referred to in §§ 21-903, 21-906, and 21-909.

§ 21-905. Superintendent to receive persons committed or apprehended under sections 21-902 and 21-903.

The Superintendent of Saint Elizabeths Hospital shall receive for observation and diagnosis a person apprehended or committed as provided by sections 21-902 and 21-903 for the periods therein prescribed, unless the person is sooner discharged or returned to his home or to the State of his residence. (Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1; 1973 Ed., § 21-905.)

§ 21-906. Examinations; adjudications; laws applicable; expense of care and treatment.

(a) The Superintendent of Saint Elizabeths Hospital shall promptly examine a person committed as provided by sections 21-902 and 21-903, and, if not found to be mentally ill, shall forthwith discharge him, or, if found to be mentally ill, shall return him to the State of his residence or to his relatives, if practicable.

(b) Proceedings for the adjudication of a person referred to by subsection (a) of this section, or of a person admitted to the hospital pursuant to section 21-904, as a mentally ill person, and for the appointment of a committee of his person or property, may be instituted in the Superior Court of the District of Columbia by the Secretary of Health and Human Services or by a party interest. The laws of the District of Columbia apply to the proceedings. This chapter does not impose upon the District of Columbia the expense of care and treatment of a person apprehended, detained, or committed under this chapter, unless the person is a resident of the District of Columbia as defined by subsection (b) of section 21-551. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(f); 1973 Ed., § 21-906; Apr. 30, 1988, D.C. Law 7-104, § 6(i), 35 DCR 147.)

Section references. — This section is referred to in § 21-904.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the

Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

"Adjudication." — The term "adjudication" in subsection (b) of this section refers to a judicial order for indefinite commitment. *Bension v. Meredith*, 455 F. Supp. 662 (D.D.C. 1978).

§ 21-907. Transfer of military personnel.

A person belonging to the armed forces arrested, apprehended, detained, or committed pursuant to this chapter shall, upon the request of the head of the department having jurisdiction over the service to which he belongs, be transferred forthwith to the custody of his service. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1; 1973 Ed., § 21-907.)

Section references. — This section is referred to in § 21-902.

§ 21-908. Care in a Veterans' Administration facility.

(a) If a person adjudicated to be a mentally ill person under this chapter is entitled to care and treatment in a Veterans' Administration facility, the United States District Court for the District of Columbia may commit him to the custody of the Administrator of Veterans' Affairs for placement in an available facility, or the Superintendent of Saint Elizabeths Hospital may transfer him to such a facility.

(b) This chapter does not limit, restrict, or deprive the courts of a State or the District of Columbia of jurisdiction to commit to the Veterans' Administration a mentally ill person entitled to care and treatment by the Veterans' Administration in accordance with the laws of the State or the District of Columbia. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1; 1973 Ed., § 21-908.)

§ 21-909. Payment of expenses of transfers.

The Superintendent of Saint Elizabeths Hospital may arrange for and pay the expenses of the transfer of a person committed to his custody pursuant to this chapter or admitted to the hospital pursuant to section 21-904 to his relatives or to a hospital in the State of his residence, and, in connection with the transfer, may pay the transportation and expenses of attendants necessary to insure safe travel. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1; 1973 Ed., § 21-909.)

CHAPTER 11. COMMITMENT AND MAINTENANCE OF SUBSTANTIALLY RETARDED PERSONS.

Sec.

21-1101. Forest Haven defined.

21-1102 to 21-1108A. [Repealed].

21-1109. Private and public patients; bond for support and maintenance; sufficiency and justification of sureties.

21-1110. Liability of estate of public patient for maintenance.

21-1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate.

Sec.

21-1112. Public patients may become private patients by filing bond and paying advance.

21-1113. [Repealed].

21-1114. Proceeding when child brought before Family Division appears at least moderately mentally retarded.

21-1115. Inquiry under this chapter if person convicted of offense.

21-1116 to 21-1118. [Repealed].

21-1119. Removal from school of nonresidents of the District of Columbia.

21-1120 to 21-1123. [Repealed].

§ 21-1101. Forest Haven defined.

For purposes of this chapter —

“Forest Haven” means the institution established pursuant to section 32-601 [32-801], and designated “Forest Haven” by section 32-602 [32-802], or any successor to that institution. (Sept. 14, 1965, 79 Stat. 766, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1088, Pub. L. 91-490, § 2(a)(4); 1973 Ed., § 21-1101; Mar. 3, 1979, D.C. Law 2-137, § 604(a)(5), 25 DCR 5094.)

Cross references. — As to Interstate Compact on Mental Health, see §§ 6-1801 to 6-1806.

Section references. — This section is referred to in § 16-2301.

Legislative history of Law 2-137. — Law 2-137, the “Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978,” was introduced in Council and assigned Bill No. 2-108, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings on September 19, 1978, and October 3, 1978, respectively. Signed by the Mayor on November 8, 1978, it was assigned Act No. 2-297 and transmitted to both Houses of Congress for its review.

References in text. — In this section, “32-801” and “32-802” were inserted, in brackets, to reflect the renumbering of “section 36-601” and “section 32-602” in the 1981 Edition of the D.C. Code.

Continuing duty to support post-majority child. — There exists in the District of Columbia a common law duty on the part of

parents to support their post-majority physically or mentally disabled children, however, given the significance the law attaches to one's reaching majority in ordinary circumstances, it is reasonable to require a reassessment of parental support obligations when a disabled child reaches the age of majority and such reassessment should not be limited by the terms of the original support order. Different considerations come into play when parents face an almost indefinite obligation to support a disabled child such as, by way of illustration and not by way of limitation, the fact that the child's reaching the age of twenty-one may affect her eligibility or level of benefits under various governmental assistance programs, private insurance plans, or other programs intended to help meet the needs of those unable to care for themselves fully or the cost of vocational training to enable the child to gain some level of employment. *Nelson v. Nelson*, App. D.C., 548 A.2d 109 (1988).

Cited in *United States v. Jackson*, 553 F.2d 109 (D.C. Cir. 1976).

§§ 21-1102 to 21-1108A. Persons received in Forest Haven; age limit; petition as to substantial retardation; contents; verification; notice; process; summons; contents; answer not required; return day; service; appointment and qualifications of physicians; examination; certificate; warrant to take into custody; detention or temporary guardianship; place of detention; hearing; continuances; character of proofs; jury trial; dismissal and discharge, or placement in Forest Haven; controlling considerations; voluntary admission to Forest Haven.

Repealed. Mar. 3, 1979, D.C. Law 2-137, § 604(a)(1), 25 DCR 5094.

Legislative history of Law 2-137. — See note to § 21-1101.

§ 21-1109. Private and public patients; bond for support and maintenance; sufficiency and justification of sureties.

(a) If, at the time of or before the making of an order for placement in Forest Haven pursuant to section 21-1108, a bond in the penal sum of \$1,000, executed by a surety company authorized to do business in the District of Columbia, or by two or more sureties to be approved by the court, and conditioned for the payment of the support and maintenance of the person in the manner prescribed by law, is delivered to the court, together with the sum of \$50 as an advance payment toward the support of the patient, the court shall order the admission of the person as a private patient. If the bond and advance payment are not given, the court shall order the admission of the person as a public patient. The bond and advance payment, together with the order of admission and bond, shall be transmitted by the clerk of the court to the Superintendent of Forest Haven. Until the bond and advance payment are delivered to the Superintendent, he shall admit the person to the institution only as a public patient.

(b) At the request of the Superintendent of Forest Haven, the court shall require the sureties on the bond provided by subsection (a) of this section to justify their responsibility anew or order that a new bond be given in place of the original. The justification or new bond shall be transmitted to the superintendent. Unless it is delivered to the Superintendent within 30 days, the patient shall from the time of the request be regarded as a public patient. (Sept. 14, 1965, 79 Stat. 768, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 159(g)(5); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2); 1973 Ed., § 21-1109.)

Section references. — This section is referred to in § 21-1112.

References in text. — Section 21-1108, re-

ferred to in the first sentence of subsection (a) of this section, was repealed by the Act of March 3, 1979, D.C. Law 2-137, § 604(a)(1).

§ 21-1110. Liability of estate of public patient for maintenance.

When the court orders the admission of a person to Forest Haven as a public patient or when a person is admitted to Forest Haven as a patient under section 21-1108A, and it appears then or thereafter that the patient has an estate out of which the Government may be reimbursed for his maintenance, in whole or in part, the court shall order the payment out of the estate of the whole or such part of the cost of maintenance of the patient at the institution as it deems just, regard being had for the needs of those having a legal right to support out of the estate. The order shall remain in full force and effect unless modified by the court. Upon the death of the substantially retarded person while an inmate at the institution, or within five years after his discharge therefrom, his estate is liable to the District of Columbia for the cost of his maintenance at the institution, and the claim of the District of Columbia is a preferred claim. (Sept. 14, 1965, 79 Stat. 769, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1), (2), (5); 1973 Ed., § 21-1110.)

Cross references. — As to right to set off damages representing compensation for care and treatment, see § 3-503.

Section references. — This section is referred to in § 21-1111.

References in text. — Section 21-1108A,

referred to in the first sentence of this section, was repealed by the Act of March 3, 1979, D.C. Law 2-137, § 604(a)(1).

Cited in *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct.).

§ 21-1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate.

(a) When a court orders the admission of a person to Forest Haven as a public patient or when a person is admitted to Forest Haven as a patient under section 21-1108A, and the court finds at any time that the patient does not have an estate out of which the District of Columbia may be fully reimbursed for his maintenance, a parent, spouse, and adult children of the substantially retarded person, if of sufficient financial ability, shall pay the cost to the District of Columbia of his maintenance at the institution. The Mayor of the District of Columbia may petition the court, during the commitment of the substantially retarded person to the institution, to direct any of those relatives to pay the District of Columbia, in whole or in part, for his maintenance at the institution. They may not be required to pay more than the actual cost to the District of Columbia of his maintenance.

(b) When the court finds that a relative specified by subsection (a) of this section is able to pay for the maintenance of the substantially retarded person,

in whole or in part, it may make an order requiring payment by him or all the relatives of such sums as it finds that he or they are reasonably able to pay and as may be necessary to provide for his maintenance. The order shall require the payment of the sums to the Finance Office of the Department of General Administration, or its successor, or its authorized representative or agency, of the District monthly, as the court directs. The Finance Office, or its successor, or its authorized representative or agency, as the case may be, shall collect the sums due under this section and section 21-1110, and turn them into the Treasury of the United States to the credit of the District of Columbia.

(c) If a relative made liable for the maintenance of the substantially retarded person fails to provide or pay for the maintenance, or his part thereof, in accordance with the order of the court, the court shall issue to him a citation to show cause why he should not be adjudged in contempt. The citation shall be served at least 10 days before the hearing thereon.

(d) An order issued under this section may be enforced against any property of a relative made liable for the maintenance of the substantially retarded person, in the same way as if it were an order for temporary alimony in a divorce case.

(e) Upon the death of a relative ordered by the court to pay for the maintenance of the substantially retarded person in whole or in part, the estate of the relative is liable to the District of Columbia for the unpaid amount due the District of Columbia under the order of court at the time of his death, and the claim of the District of Columbia is a preferred claim against his estate. (Sept. 14, 1965, 79 Stat. 769, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A), (6); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1), (2), (6); 1973 Ed., § 21-1111.)

References in text. — Section 21-1108A, referred to in the first sentence of subsection (a), was repealed by the Act of March 3, 1979, D.C. Law 2-137, § 604(a)(1).

Court to determine reimbursement from patient's family. — Under subsection

(a), if a court is asked to assess the estate of a mentally retarded person for partial reimbursement for his maintenance, then the court must also assess the estate of the person's family for full reimbursement. In re W.M., 112 WLR 369 (Super. Ct.).

§ 21-1112. Public patients may become private patients by filing bond and paying advance.

When a person is admitted to Forest Haven as a public patient, and thereafter the bond and advance payment referred to in section 21-1109 are executed and delivered to the court, the court shall make an order changing the status of the person from a public to a private patient. (Sept. 14, 1965, 79 Stat. 770, Pub. L. 89-183, § 1; Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2); 1973 Ed., § 21-1112.)

§ 21-1113. Restrictions on discharge; petition for discharge; causes for discharge; superintendent to be notified; notice of variation of order; denial on petition not a bar to another.

Repealed. Mar. 3, 1979, D.C. Law 2-137, § 604(a)(1), 25 DCR 5094.

Legislative history of Law 2-137. — See note to § 21-1101.

§ 21-1114. Proceeding when child brought before Family Division appears at least moderately mentally retarded.

When a child is brought before the Family Division of the Superior Court upon allegations that he is delinquent, neglected, or in need of supervision, and it appears to the court, on the testimony of a physician or psychologist or other evidence, that the child is at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act (D.C. Code, sec. 6-1651 et seq.) [§ 6-1901 et seq.], the court may adjourn the proceedings, other than proceedings on a motion to transfer pursuant to section 16-2307, and direct the child's parent or a guardian appointed by the court to file a petition under that act. The court may order that, pending the preparation, filing, and hearing of the petition, the child be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance. (Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(7); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1), (12); 1973 Ed., § 21-1114; Mar. 3, 1979, D.C. Law 2-137, § 604(a)(2), 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 21-1101.

References in text. — The Mentally Retarded Citizens Constitutional Rights and Dignity Act, referred to in the first sentence of this section, was codified as § 6-1651 et seq. in the 1973 Edition of the D.C. Code and is codified as § 6-1901 et seq. in the 1981 Edition of the D.C. Code.

Treatment through juvenile division or facilities for mentally retarded. — Section 16-2315 prescribes a standard of incompetency for juvenile delinquency proceedings which is

precisely the same as the standard required for commitment of mentally retarded juveniles under this section and § 6-1926. In both instances, the respondent must be "at least moderately mentally retarded," as defined in § 6-1902(2). The result of this symmetry is that a child offender will receive treatment through either the juvenile division or a facility for the mentally retarded. In re W.F., 116 WLR 1913 (Super. Ct.).

Cited in In re W.A.F., App. D.C., 573 A.2d 1264 (1990).

§ 21-1115. Inquiry under this chapter if person convicted of offense.

(a) On the conviction by a court of record of competent jurisdiction of a person of an offense, or of a violation of an ordinance which is in whole or in part a violation of a statute of the District of Columbia, the court when satisfied on the testimony of a physician or a psychologist or other evidence that the person is at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act (D.C. Code, sec. 6-1651 et seq.) [§ 6-1901 et seq.], may suspend sentence, or suspend the entering of an order sending the person to a jail, prison, or reformatory, or to a training or industrial school, and direct that a parent or guardian appointed by the court file a petition under that act.

(b) When the court directs a petition to be filed pursuant to subsection (a) of this section, it may order that, pending the preparation, filing and hearing of the petition, the person be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance.

(c) Where, upon the hearing of a petition filed pursuant to this section or pursuant to a subsequent hearing under this chapter, the person is found not to be at least moderately mentally retarded, the court shall impose sentence. (Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1); 1973 Ed., § 21-1115; Mar. 3, 1979, D.C. Law 2-137, § 604(a)(3), (4), 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 21-1101.

References in text. — The Mentally Retarded Citizens Constitutional Rights and Dig-

nity Act, referred to in subsection (a) of this section, is codified in § 6-1901 et seq. in the 1981 Edition of the D.C. Code.

§§ 21-1116 to 21-1118. Transfer to Saint Elizabeths Hospital when person becomes insane; separate docket of cases brought under section 21-1103; reports of commissions; transfer of substantially retarded from National Training Schools for Boys or Girls.

Repealed. Mar. 3, 1979, D.C. Law 2-137, § 604(a)(1), 25 DCR 5094.

Legislative history of Law 2-137. — See note to § 21-1101.

§ 21-1119. Removal from school of nonresidents of the District of Columbia.

The Department of Public Welfare [Department of Human Services] shall cause a person who has been admitted to Forest Haven, but who has not acquired a legal residence in the District, to be removed as soon as possible to the State in which he belongs. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89-183, § 1; Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2); 1973 Ed., § 21-1119.)

Transfer of functions. — Functions of the Department of Public Welfare were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commis-

sioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§§ 21-1120 to 21-1123. Paroles; conditions; expense; discretion of superintendent; violation; return; citation, order, or process on patients to be served

only by superintendent; approval of patients' contracts, etc., by court; offenses and penalties.

Repealed. Mar. 3, 1979, D.C. Law 2-137, § 604(a)(1), 25 DCR 5094.

Legislative history of Law 2-137. — See note to § 21-1101.

CHAPTER 12. USE OF TRAINED EMPLOYEES TO ADMINISTER MEDICATION TO PERSONS WITH MENTAL RETARDATION OR OTHER DISABILITIES.

Sec.

21-1201. Definitions.

21-1202. Self-administration of medication by program participants.

21-1203. Administration of medication to program participants by trained employees.

Sec.

21-1204. Requirements of medication orders.

21-1205. Rules and regulations for implementation.

§ 21-1201. Definitions.

For the purposes of this chapter, the term:

(1) "Administer" means:

(A) The direct application of medication to the human body whether by ingestion, inhalation, insertion, or topical means; or

(B) An injection of epipen or equivalent ejection system for emergency purposes only.

(2) "Consent" means permission voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving permission to make an informed and enlightened decision, without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(3) "Developmental disability" means a severe chronic disability of a person 5 years of age or older which:

(A) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(B) Is manifested before the person attains 22 years of age;

(C) Is likely to continue indefinitely;

(D) Results in substantial functional limitations in 3 or more of the following major life activities:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency; and

(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children means individuals from birth to 5 years of age, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting developmental disability if services are not provided.

(4) "General supervision" means:

(A) A registered nurse shall be available for verbal or on-site consultation to the trained employee or licensed practical nurse.

(B) A registered nurse shall review and document the trained employee's ability to administer medication correctly to program participants every 3 months for the 1st year and every 6 months thereafter.

(5) "Licensed practitioner" means a medical doctor, dentist, or advanced registered nurse.

(6) "Medication" means a controlled (excluding Classes I and II) or noncontrolled substance or treatment regarded as effective in bringing about recovery, restoration of health, alleviation of pain or symptoms of an illness, or the normal functioning of the body.

(7) "Mental retardation" means a substantial limitation in mental capacity that manifests before 18 years of age, characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in 2 or more of the following applicable, adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

(8) "Monitor" means:

(A) A registered nurse shall, at a minimum, annually review the program participant's ability to self-administer medication correctly as prescribed.

(B) A registered nurse shall document in the program participant's records an assessment of the program participant's ability to continue self-administering the program participant's medication.

(C) A trained employee shall, at a minimum, review quarterly and document the program participant's ability to self-administer medication as prescribed.

(9) "Prescription" means an order for medication signed by a licensed practitioner or transmitted by the licensed practitioner to a pharmacist, registered nurse, or licensed practical nurse by word of mouth, telephone, telegraph, or other means of communication, and recorded in writing by the pharmacist, registered nurse, or licensed practical nurse.

(10) "Program" means an agency licensed, certified, or approved by the District government as a child care facility, private school, day program, community based residence, or other agency providing residential services, education, habilitation, vocational, or employment training services to individuals with mental retardation or other developmental disability.

(11) "Program participant" means an individual with mental retardation or other development disability who is enrolled in or attending a public or private program.

(12) "Self-administration of medication" means that the program participant has the ability to identify, pour, and administer medication without assistance.

(13) "Trained employee" means an individual employed to work in a program who has successfully completed a training program approved by the District of Columbia Board of Nursing and is certified to administer medication to program participants. (Sept. 26, 1996, D.C. Law 11-52, § 601(b), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 20(c), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 made a punctuation change at the end of (3)(A).

Temporary addition of chapter. — Sections 601-606 of D.C. Law 10-253 enacted a new chapter to be cited as "Use of Trained Employees to Administer Medication to Persons with Mental Retardation or Other Disabilities Temporary Act of 1994" which was substantially similar to the chapter enacted by D.C. Law 11-52.

Emergency act amendments. — For temporary addition of chapter, see § 601 (b) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary addition of chapter substantially similar to provisions added by D.C. Law 11-52, see §§ 601-606 of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 11-52. — Law

11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 21-1202. Self-administration of medication by program participants.

A program participant may self-administer medication provided that:

- (1) The program participant has been assessed by a registered nurse to have the ability to self-administer medication;
- (2) The self-administration of medication is monitored; and
- (3) The program participant's self-administration skills include, but are not limited to, orientation to time, knowledge of quantities and proper storage, and understanding of possible medication reactions. (Sept. 26, 1995, D.C. Law 11-52, § 601(b), 42 DCR 3684.)

Legislative history of Law 11-52. — See note to § 21-1201.

§ 21-1203. Administration of medication to program participants by trained employees.

(a) Notwithstanding any other law, rule, or regulation, a program employee who has been trained in accordance with § 21-1205(b) may administer prescription or nonprescription medication to a program participant in compliance with the signed, written instructions of a licensed practitioner if:

- (1) The program participant, guardian, or parent has consented to the administration of medication in writing;
- (2) The trained employee is under the general supervision of a registered nurse pursuant to rules and regulations promulgated by the District of Columbia Board of Nursing under § 21-1205(a); and
- (3) The program participant is incapable of self-administration of medication.

(b) Program employees who are trained to administer medication in accordance with this chapter shall be immune from civil liability arising from a

wrongful act or omission in administering medication, except that they shall not be immune from civil liability if the wrongful act or omission in administering medication is intentional or manifests a willful or wanton disregard for the health or safety of the program participant to whom the medication is administered. Neither the District government nor the program shall be liable in circumstances where program employee is immune under this section, unless the conduct of the employee is gross negligence.

(c) Registered nurses who authorize or monitor the administration of medication, or provide training in accordance with this chapter, shall be immune from civil liability arising from a wrongful act or omission in authorizing or monitoring the administration of medication or providing training, except that they shall not be immune from civil liability if the wrongful act or omission in authorizing or monitoring the administration of medication or providing training is intentional or manifests a willful or wanton disregard for the health or safety of the program participant to whom the medication is administered. Neither the District government nor the program shall be liable in circumstances where the program employee is immune under this section, unless the conduct of the employee is gross negligence. (Sept. 26, 1995, D.C. Law 11-52, § 601(b), 42 DCR 3684.)

Legislative history of Law 11-52. — See note to § 21-1201.

§ 21-1204. Requirements of medication orders.

(a) The written instructions of the licensed practitioner shall state the name of the program participant who is to receive medication, the name of the medication, name and telephone number of the licensed practitioner, the time of administration, dosage, method of administration, and duration of medication.

(b) The medication shall be labeled so as to state the name of the program participant, the name of the medication, name of the licensed practitioner, the name and telephone number of the pharmacy, the date dispensed, the amount and expiration date, the time of administration, duration of medication, dosage, and method of administration.

(c) The medication shall be accompanied by a medical order form which shall state the name of the program participant, the name of the medication, name and telephone number of the licensed practitioner, the date dispensed, the time of administration, duration of medication, dosage, method of administration, and any potential major side effects. (Sept. 26, 1995, D.C. Law 11-52, § 601(b), 42 DCR 3684.)

Legislative history of Law 11-52. — See note to § 21-1201.

§ 21-1205. Rules and regulations for implementation.

(a) Within 90 days of the effective date of this chapter, the District of Columbia Board of Nursing shall issue proposed rules and regulations to

implement this chapter. The rules and regulations issued shall include procedures for:

- (1) Obtaining and filing written instructions and consent required by this chapter;
- (2) Periodic review of written instructions;
- (3) Storage of medication;
- (4) Record keeping;
- (5) Initial and ongoing training for certification and recertification for all program employees to administer medication;
- (6) The administration of medication in emergency or life-threatening circumstances;
- (7) The provision of general supervision by registered nurses of trained employees;
- (8) The provision for the successful completion of training for program employees pursuant to this chapter;
- (9) The monitoring of trained employees who may administer medication to program participants; and
- (10) The development of assessment tools.

(b) Training programs for all program employees who may be authorized to administer medication in accordance with this chapter shall be approved by the District of Columbia Board of Nursing and developed and provided in collaboration with the District of Columbia Department of Human Services and the District of Columbia Department of Consumer and Regulatory Affairs. Training may be provided by a registered nurse or through agreements of reciprocity with jurisdictions that meet the minimum training requirements. (Sept. 26, 1995, D.C. Law 11-52, § 601(b), 42 DCR 3684.)

Section references. — This section is referred to in § 21-1203.

Legislative history of Law 11-52. — See note to § 21-1201.

CHAPTER 13. ALCOHOLICS AND DRUG ADDICTS.

Sec.

21-1301 to 21-1304. [Repealed].

§§ 21-1301 to 21-1304. Appointment of committee; bond; powers and duties; jurisdiction of court over property; discharge.

Repealed. Feb. 28, 1987, D.C. Law 6-204, § 3, 34 DCR 632.

Legislative history of Law 6-204. — Law 6-204, the “District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986,” was introduced in Council and assigned Bill No. 6-7, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act. No. 6-263 and transmitted to both Houses of Congress for its review.

CHAPTER 15. CONSERVATORS.

Sec.

21-1501 to 21-1507. [Repealed].

§§ 21-1501 to 21-1507. Appointment of conservators; filing of petition; requirements; time and place of hearings; appointment of guardian ad litem; bond; powers and duties; discharge; appointment of temporary conservator; personal welfare of person under conservatorship; lis pendens.

Repealed. Feb. 28, 1987, D.C. Law 6-204, § 3, 34 DCR 632.

Legislative history of Law 6-204. — Law 6-204, the “District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986,” was introduced in Council and assigned Bill No. 6-7, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act. No. 6-263 and transmitted to both Houses of Congress for its review.

CHAPTER 17. GENERAL FIDUCIARY RELATIONS.

Subchapter I. Uniform Fiduciaries Act.

- Sec.
 21-1701. Definitions.
 21-1702. Application of payment made to fiduciaries.
 21-1703. Transfer of negotiable instruments by fiduciary.
 21-1704. Check drawn by fiduciary payable to third person.
 21-1705. Check drawn by and payable to fiduciary.
 21-1706. Deposit in name of fiduciary as such.
 21-1707. Deposit in name of principal; check

Sec.

- drawn thereon by fiduciary; check payable to drawee bank.
 21-1708. Conforming amendment.
 21-1709. Deposit in names of two or more trustees.
 21-1710. Law not retroactive.
 21-1711. Cases not provided for by chapter.
 21-1712. Short title.

Subchapter II. General Provisions.

- 21-1721. Investment of trust assets.

Subchapter I. Uniform Fiduciaries Act.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 8-9, the preexisting text of Chapter 17, to include §§ 21-1701 through 21-1712, has been designated as subchapter I of this chapter.

§ 21-1701. Definitions.

(a) In this chapter unless the context otherwise requires:

“bank” includes a person or association of persons, whether incorporated or not, carrying on the business of banking;

“fiduciary” includes a trustee under a trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or other person acting in a fiduciary capacity for a person, trust, or estate;

“person” includes a corporation, partnership, or other association, or two or more persons having a joint or common interest;

“principal” includes a person to whom a fiduciary as such owes an obligation.

(b) A thing is done “in good faith” within the meaning of this chapter, when it is in fact done honestly, whether negligently or not. (Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1; 1973 Ed., § 21-1701.)

Cross references. — As to transfer of securities to and by fiduciaries, see §§ 28:8-308 and 28:8-402 to 28:8-406.

§ 21-1702. Application of payment made to fiduciaries.

A person who in good faith pays or transfers to a fiduciary money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of the payment or transfer is not invalid in consequence of a misapplication by the fiduciary. (Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1; 1973 Ed., § 21-1702.)

Cross references. — As to trust or joint accounts, deposits, or safe deposit boxes, see §§ 26-201 to 26-204.

This chapter applies only when 1 person honestly deals with another knowing him

to be a fiduciary, and, in the face of conflicting evidence, the question of whether a person is authorized to receive funds is best left to the trier of fact. *Boutros v. Riggs Nat'l Bank*, 655 F.2d 1257 (D.C. Cir. 1981).

§ 21-1703. Transfer of negotiable instruments by fiduciary.

If a negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if a negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse the instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, the instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in a transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument. (Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1; 1973 Ed., § 21-1703.)

§ 21-1704. Check drawn by fiduciary payable to third person.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such an instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of facts that his action in taking the instrument amounts to bad faith. Where, however, the instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in a transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument. (Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1; 1973 Ed., § 21-1704.)

§ 21-1705. Check drawn by and payable to fiduciary.

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such an instrument in

the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligations as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of facts that his action in taking the instrument amounts to bad faith. (Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1; 1973 Ed., § 21-1705.)

§ 21-1706. Deposit in name of fiduciary as such.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which the deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of facts that its action in paying the check amounts to bad faith. If, however, the check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1; 1973 Ed., § 21-1706.)

This chapter applies only to liability for check transactions. *Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses & Missionaries*, 381 F. Supp. 1003 (D.D.C. 1974).

"Actual knowledge." — Notice from an adverse claimant, asserting by affidavit that the depositor is a trustee and that the claimant believes such trustee is about to misappropriate the funds in an account, constitutes "actual knowledge" by the bank under this section with respect to the breach of an obligation by the fiduciary. *Goldstein v. Riggs Nat'l Bank*, 459 F.2d 1161 (D.C. Cir. 1972).

Evidence in a mining workers' derivative action against the welfare fund trustees, the union, and the bank, controlled by the union, compelled the conclusion that the bank knowingly accepted and participated in a continuing breach of trust that redounded substantially to its own benefit; proof was sufficient despite the requirement of "actual knowledge" of the breach of trust or knowledge of such facts that its action amounts to bad faith. *Blankenship v. Boyle*, 329 F. Supp. 1089 (D.D.C. 1971), supplemental opinion, 337 F. Supp. 296 (D.D.C. 1972).

§ 21-1707. Deposit in name of principal; check drawn thereon by fiduciary; check payable to drawee bank.

If a check is drawn upon a bank account of his principal by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay the checks without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check, or with knowledge of facts that its action in paying the check amounts to bad faith. If, however, the check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the

principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1; 1973 Ed., § 21-1707.)

§ 21-1708. Conforming amendment.

When a fiduciary deposits in a bank to his personal credit checks:

- (1) drawn by him upon an account in his own name as fiduciary; or
- (2) payable to him as fiduciary; or
- (3) drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon; or

(4) payable to his principal and indorsed by him, if he is empowered to indorse such checks —

or if he otherwise deposits funds held by him as fiduciary, the bank has notice of the breach of fiduciary duty if the instrument is deposited to an account other than an account of the fiduciary, as such, or an account of the represented person. (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; 1973 Ed., § 21-1708; March 21, 1995, D.C. Law 10-249, § 3, 42 DCR 467; Apr. 9, 1997, D.C. Law 11-255, § 20(d), 44 DCR 1271.)

Effect of amendments. — D.C. Law 10-249 rewrote the last paragraph.

D.C. Law 11-255 corrected the spelling of “fiduciary” in the introductory language.

Legislative history of Law 10-249. — Law 10-249, the “Uniform Commercial Code-Negotiable Instruments Act of 1994,” was introduced in Council and assigned Bill No. 10-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-396 and transmitted to both Houses of Congress for its review. D.C. Law 10-249 became effective on March 23, 1995.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act

of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

“Actual knowledge.” — Notice from an adverse claimant asserting by affidavit that the depositor is a trustee and that the claimant believes the trustee is about to misappropriate the funds in an account constitutes “actual knowledge” by the bank under this section with respect to breach of obligation by the fiduciary. *Goldstein v. Riggs Nat’l Bank*, 459 F.2d 1161 (D.C. Cir. 1972).

§ 21-1709. Deposit in names of two or more trustees.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee authorized by the others to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize the trustee to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith. (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; 1973 Ed., § 21-1709.)

§ 21-1710. Law not retroactive.

This chapter does not apply to transactions that took place prior to May 14, 1928. (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; 1973 Ed., § 21-1710.)

§ 21-1711. Cases not provided for by chapter.

In a case not provided for by this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking, continue to apply. (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; 1973 Ed., § 21-1711.)

§ 21-1712. Short title.

This subchapter may be cited as the "Uniform Fiduciaries Act". (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; 1973 Ed., § 21-1712; June 16, 1989, D.C. Law 8-9, § 2(c), 36 DCR 3361.)

Legislative history of Law 8-9. — See note to § 21-1721.

*Subchapter II. General Provisions.***§ 21-1721. Investment of trust assets.**

(a) In addition to any other investment permitted by law, court order, or instrument governing a fiduciary relationship, any Banking Institution authorized to do business in the District of Columbia ("District") or any person receiving and holding property in a fiduciary capacity in the District may, in the absence of an express provision to the contrary and when a governing instrument or order directs or authorizes investment in obligations of the government of the United States, invest in the obligations either:

(1) Directly; or

(2) In the form of the securities of or any other interest in any open-end or closed-end management investment company registered under the Investment Company Act of 1940, approved August 22, 1940 (51 Stat. 789; 15 USC 80a-1 *et seq.*), if:

(A) The portfolio of the investment company is limited to obligations of the government of the United States or repurchase agreements fully collateralized by obligations of the government of the United States; and

(B) The investment company takes delivery of the collateral either directly or through an authorized custodian.

(a-1)(1) Unless prohibited or otherwise limited by an instrument governing a fiduciary relationship, any Banking Institution authorized to do business in the District of Columbia in a fiduciary capacity may invest in the securities of or any other interest in any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, approved August 22, 1940 (54 Stat. 789; 15 U.S.C. 80a-1 *et seq.*), notwithstanding that the Banking Institution or an affiliate or a division of the

Banking Institution provides services to the investment company or investment trust, including services as an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, or manager.

(2) With respect to any funds invested pursuant to the authority, the Banking Institution shall disclose annually (by statement, prospectus or otherwise) to all current income beneficiaries of an account, the rate, formula or other method by which remuneration, received or to be received by the Banking Institution or affiliate or division of the Banking Institution for the services to the investment company or investment trust, is determined. The remuneration to the Banking Institution, or to the affiliate or division of the Banking Institution, shall not exceed the customary or prevailing amount that is charged by the Banking Institution, or its affiliate or division, for providing comparable services for the benefit of nonfiduciary accounts.

(b) For the purpose of this section, the term:

(1) "Banking Institution" means any entity authorized to exercise fiduciary powers in the District.

(2) "District" means District of Columbia. (June 16, 1989, D.C. Law 8-9, § 2(d), 36 DCR 3361; Mar. 16, 1993, D.C. Law 9-187, 39 DCR 8228.)

Legislative history of Law 8-9. — Law 8-9, the "Fiduciary Investment Act of 1989," was introduced in Council and assigned Bill No. 8-140, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 4, 1989, and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-25 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-187. — Law

9-187, the "Banking Institutions Trust Investment Act of 1992," was introduced in Council and assigned Bill No. 9-395, which was referred to the Committee on Education. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-307 and transmitted to both Houses of Congress for its review. D.C. Law 9-187 became effective on March 16, 1993.

CHAPTER 18. CHARITABLE AND SPLIT-INTEREST TRUSTS.

Sec.

21-1801. Charitable and split-interest trusts.

§ 21-1801. Charitable and split-interest trusts.

(a) Notwithstanding any provision to the contrary in the governing instrument or under any law applicable to the District of Columbia (except as provided in subsection (e) of this section), the governing instrument of any trust which is treated during a particular year as a private foundation described in section 509 of the Internal Revenue Code of 1954 (including any nonexempt charitable trust described in section 4947(a)(1) of the Code which is treated as a private foundation) and the governing instrument of any nonexempt split-interest trust described in section 4947(a)(2) of the Code (but only to the extent that section 508(e) of the Code is applicable to such nonexempt split-interest trust) shall be deemed during such particular year to contain all of the following provisions:

(1) The trust shall not engage in any act of self-dealing which is taxable under section 4941 of the Code.

(2) The trust shall make distributions at such time and in such manner as not to subject it to tax under section 4942 of the Code.

(3) The trust shall not retain any excess business holdings which would subject it to tax under section 4943 of the Code.

(4) The trust shall not make any investments which would subject it to tax under section 4944 of the Code.

(5) The trust shall not make any taxable expenditures which would subject it to tax under section 4945 of the Code.

With respect to any such trust created prior to January 1, 1970, subsection (a) shall apply to taxable years beginning on or after January 1, 1972.

(b) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in subsection (a), other than a trust described in section 4947(a)(2) of the Code, may, without application to any court, amend the governing instrument expressly to include the provisions required by section 508(e) of the Code by executing a written amendment to the trust and delivering a copy thereof, by certified mail, to each named beneficiary, if any.

(c) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in section 4947(a)(2) of the Code to which subsection (a) is applicable may, after obtaining the written consent of the creator of such trust if then living and competent to give such consent, and without application to any court, amend the governing instrument expressly to include the provisions required by section 508(e) of the Code by executing a written amendment to the trust and delivering a copy thereof by certified mail, to each named beneficiary, if any.

(d) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in section 4947(a)(2) of the Code to which subsection (a) is applicable, with the consent of each beneficiary

named in such governing instrument, may, without application to any court, amend the governing instrument to conform to the provisions of section 664 of the Code by executing a written amendment to the trust for such purpose. Consent shall not be required as to individual named beneficiaries not living at the time of the amendment. In the case of any individual beneficiary not competent to give consent, the consent of a guardian, appointed by a court of competent jurisdiction, shall be treated as consent of the beneficiary. In the case of any amendment to a trust created by will, such amendment may, if provided in the amendment, be deemed to apply as of the date of death of the testator.

(e) The provisions of subsection (a) shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the governing instrument and that such instrument may not properly be amended to conform with subsection (a).

(f) For purposes of this section, the term "trust" includes (1) any trust created by will of a resident of the District of Columbia admitted to probate in the District of Columbia, (2) any trust created by a resident of the District of Columbia and executed in the District of Columbia, (3) any trust of which the trustee or a co-trustee is a bank or trust company doing business in the District of Columbia, (4) any trust of which a majority of the trustees are resident in the District of Columbia, (5) any trust of real property located in the District of Columbia, and (6) any trust the governing instrument of which provides that it is governed by the laws of the District of Columbia.

(g) For the purposes of this section, the term "Code" means the Internal Revenue Code of 1954. (Dec. 6, 1971, 85 Stat. 494, Pub. L. 92-177, § 1; 1973 Ed., § 21-1801.)

Cross references. — As to similar provisions relating to corporations, see § 29-531.

As to the management of institutional funds, see §§ 32-401 to 32-407.

Section references. — This section is referred to in § 29-531.

References in text. — Sections 508, 509, 664, 4941 to 4945, and 4947 of the Internal Revenue Code of 1954, referred to throughout this section, are classified to the Internal Revenue Code of 1986 as 26 U.S.C. §§ 508, 509, 644, 4941 to 4945, and 4947.

CHAPTER 19. ESTATES OF ABSENTEES AND ABSCONDERS.

Sec.

21-1901 to 21-1915. [Repealed].

§§ 21-1901 to 21-1915. Petition for appointment of receiver, where absentees interested in property; Corporation Counsel as party; warrant to United States marshal; fees of marshal; notice of hearing to absentee and interested parties; time of hearing; publication and posting of notice; appointment of receiver; bond; finding of date of disappearance; transfer of property to receiver; schedule of property; possession, by receiver, of additional property; collection of debts; procedure where absentee left only debts due him; appointment of receiver; care, custody, sale of property; support of absentee's spouse and minor children; receiver may adjust claims of or against estate; compensation of receiver; interest of absentee in property to cease after fourteen years; distribution after fourteen years as if absentee had died intestate; time for distribution and accounting when receiver not appointed within thirteen years; construction with other laws.

Repealed. Feb. 28, 1987, D.C. Law 6-204, § 3, 34 DCR 632.

Legislative history of Law 6-204. — Law 6-204, the "District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986," was introduced in Council and assigned Bill No. 6-7, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act. No. 6-263 and transmitted to both Houses of Congress for its review.

CHAPTER 20. GUARDIANSHIP, PROTECTIVE PROCEEDINGS, AND DURABLE POWER OF ATTORNEY.

Subchapter I. General Provisions.

- Sec.
21-2001. Rule of construction; purposes.
21-2002. Supplementary general principles of law applicable.
21-2003. Standard of proof.
21-2004. Effect of a finding of incapacity.

Subchapter II. Definitions.

- 21-2011. Definitions.

Subchapter III. Scope.

- 21-2021. Territorial application.
21-2022. Practice in court.
21-2023. [Repealed].
21-2024. Appeals.

Subchapter IV. Notice, Parties, and Representation in Guardianship and Protective Proceedings.

- 21-2031. Notice; method, contents, and time of giving.
21-2032. Notice; waiver.
21-2033. Guardian ad litem; counsel; visitor.
21-2034. Request for notice; interested person.

Subchapter V. Guardians of Incapacitated Individuals.

- 21-2041. Procedure for court-appointment of a guardian of an incapacitated individual.
21-2042. Notice; guardianship proceeding.
21-2043. Who may be guardian; priorities.
21-2044. Findings; order of appointment.
21-2045. Acceptance of appointment; consent of jurisdiction.
21-2046. Emergency orders; temporary guardians.
21-2047. General powers and duties of guardian.
21-2048. Termination of guardianship for incapacitated individual.
21-2049. Removal or resignation of guardian; termination of incapacity.

Subchapter VI. Protection of Property of Incapacitated, Disappeared or Detained Individuals.

- 21-2051. Protective proceedings.
21-2052. Original petition for appointment or protective order.
21-2053. Notice.
21-2054. Procedure concerning hearing and order on original petition.
21-2055. Permissible court orders.

Sec.

- 21-2056. Protective arrangements and single transactions authorized.
21-2057. Who may be appointed conservator; priorities.
21-2058. Bond.
21-2059. Effect of acceptance of appointment.
21-2060. Compensation and expenses.
21-2061. Death, resignation, or removal of conservator.
21-2062. Petitions for orders subsequent to appointment.
21-2063. General duty of conservator.
21-2064. Inventory and records.
21-2065. Accounts.
21-2066. Conservators; title by appointment.
21-2067. Recording of conservator's letters.
21-2068. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.
21-2069. Persons dealing with conservators; protection.
21-2070. Powers of conservator in administration.
21-2071. Distributive duties and powers of conservator.
21-2072. Enlargement or limitation of powers of conservator.
21-2073. Preservation of estate plan; right to examine.
21-2074. Personal liability of conservator.
21-2075. Termination of proceedings.
21-2076. Payment of debt and delivery of property to foreign conservator without local proceedings.
21-2077. Foreign conservator; proof of authority; bond; powers.

Subchapter VII. Durable Power of Attorney.

- 21-2081. Definition.
21-2082. Durable power of attorney not affected by incapacity.
21-2083. Relation of attorney in fact to court-appointed fiduciary.
21-2084. Power of attorney not revoked until notice.
21-2085. Proof of continuance of durable and other powers of attorney by affidavit.

Subchapter VIII. Uniform Disclaimer of Property Interests.

- 21-2091. Right to disclaim interest in property.
21-2092. Time of disclaimer; delivery.
21-2093. Form of disclaimer.
21-2094. Effect of disclaimer.
21-2095. Waiver and bar.
21-2096. Remedy not exclusive.

Sec.

21-2097. Application.

21-2098. Uniformity of application and construction.

Subchapter I. General Provisions.

§ 21-2001. Rule of construction; purposes.

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are to:

(1) Simplify and clarify the law concerning the affairs of missing individuals, protected individuals, and incapacitated individuals;

(2) Promote a speedy and efficient system for managing and protecting the estates of protected individuals so that assets may be preserved for application to the needs of protected individuals and their dependents; and

(3) Provide a system of general and limited guardianships for incapacitated individuals and coordinate guardianships and protective proceedings concerned with management and protection of estates of incapacitated individuals. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in § 21-2203.

Legislative history of Law 6-204. — Law 6-204, the "District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986," was introduced in Council and assigned Bill No. 6-7, which was re-

ferred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act. No. 6-263 and transmitted to both Houses of Congress for its review.

§ 21-2002. Supplementary general principles of law applicable.

(a) Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

(b) Nothing in this chapter shall operate to repeal, alter, or amend the rights of an individual who is the subject of a petition for civil commitment in any proceeding under chapter 5 of title 21, or the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective November 8, 1978 (D.C. Law 2-137; D.C. Code, sec. 6-1901 *et seq.*).

(c) Nothing in this chapter shall affect any guardian or conservator appointed by the court upon a petition filed prior to the effective date of this chapter. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(b), 36 DCR 5035.)

Legislative history of Law 6-204. — See note to § 21-2001.

Legislative history of Law 8-34. — Law 8-34, the "Guardianship Protective Proceedings, and Durable Power of Attorney Revision Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-226, which was

referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1989, and June 27, 1989, respectively. Signed by the Mayor on July 7, 1989, it was assigned Act No. 8-59 and transmitted to both Houses of Congress for its review.

References in text. — The "effective date of

this chapter," referred to in subsection (c), is February 28, 1987.

§ 21-2003. Standard of proof.

In proceedings under this chapter for the appointment of a guardian or conservator, either general or limited, or subsequent proceedings in which the powers of a guardian or conservator are sought to be enlarged, the petitioner or moving party shall present clear and convincing evidence that the appointment or enlargement of powers is warranted. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2004. Effect of a finding of incapacity.

A finding under this chapter that an individual is incapacitated shall not constitute a finding of legal incompetence. An individual found to be incapacitated shall retain all legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective proceeding, or subsequent order of the court. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Subchapter II. Definitions.

§ 21-2011. Definitions.

For the purposes of this chapter, the term:

(1) "Claims" in respect to a protected individual, means liabilities of the protected individual, whether arising in contract, tort, or otherwise, and liabilities of the estate that arise at or after the appointment of a conservator, including expenses of administration.

(2) "Court" means the Superior Court of the District of Columbia.

(3) "Conservator" means a person who is appointed by a court to manage the estate of a protected individual and includes a limited conservator described in section 21-2066(a).

(4) "Counsel" means an attorney admitted to the practice of law in the District.

(5) "District" means District of Columbia.

(6) "Estate" means the property of the individual whose affairs are subject to this chapter.

(7) "Examiner" means an individual qualified by training or experience in the diagnosis, care, or treatment of the causes and conditions giving rise to the alleged incapacity, such as a gerontologist, psychiatrist, or qualified mental retardation professional.

(8) "Guardian" means a person who has qualified as a guardian of an incapacitated individual pursuant to court appointment and includes a limited guardian as described in section 21-2044(c), but excludes one who is merely a guardian ad litem.

(9) "Guardian ad litem" means an individual appointed by the court to assist the subject of an intervention proceeding to determine his or her interests in regard to the guardianship or protective proceeding or to make that determination if the subject of the intervention proceeding is unconscious or otherwise wholly incapable of determining his or her interest in the proceeding even with assistance.

(10) "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency.

(11) "Incapacitated individual" means an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator.

(12) "Intervention proceeding" means any proceeding under this chapter.

(13) "Lease" means an oil, gas, or other mineral lease.

(14) "Letters" means letters of guardianship and letters of conservatorship.

(15) "Manage financial resources" means those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(16) "Meet essential requirements for physical health or safety" means those actions necessary to provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur.

(17) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as collateral.

(18) "Organization" includes a corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.

(19) "Person" means an individual or an organization.

(20) "Petition" means a written request to the court for an order after notice.

(21) "Property" means anything that may be the subject of ownership, and includes both real and personal property and any interest in real or personal property.

(22) "Protected individual" means an individual for whom a conservator has been appointed or other protective order has been made as provided in sections 21-2055 and 21-2056.

(23) "Protective proceeding" means a proceeding under the provisions of subchapter VI of this chapter.

(24) "Qualified mental retardation professional" means:

(A) A psychologist with at least a master's degree from an accredited program and with specialized training or 1 year of experience in mental retardation;

(B) A physician licensed to practice medicine in the District and with specialized training in mental retardation or with 1 year of experience in treating mentally retarded individuals;

(C) An educator with a degree in education from an accredited program and with specialized training or 1 year of experience in working with mentally retarded individuals;

(D) A social worker with:

(i) A master's degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in mental retardation or with 1 year of experience in working with mentally retarded individuals; or

(ii) A bachelor's degree from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in subparagraph (D)(i) and who has specialized training in mental retardation or 1 year of experience in working with mentally retarded individuals;

(E) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in mental retardation or 1 year of experience in working with mentally retarded individuals;

(F) A physical or occupational therapist with a bachelor's degree from an accredited program in physical or occupational therapy and who has specialized training or 1 year of experience in working with mentally retarded individuals; or

(G) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or 1 year of experience in working with mentally retarded individuals.

(25) "Security" means any:

(A) Note;

(B) Stock;

(C) Treasury stock;

(D) Bond debenture;

(E) Evidence of indebtedness;

(F) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(G) Collateral trust certificate;

(H) Transferable share;

(I) Voting trust certificate; or

(J) Interest or instrument commonly known as a security, certificate of interest or participation, temporary or interim certificate, receipt, certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.

(26) "Visitor" means a person appointed in a guardianship or protective proceeding who is an officer, employee, or special appointee of the court and who has no personal interest in the proceeding.

(27) "Ward" means an individual for whom a guardian has been appointed. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in § 21-2051.

Legislative history of Law 6-204. — See note to § 21-2001.

"Estate" — "Estate" includes noncash assets.

In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

Cited in In re Estate of Burch, 120 WLR 2701 (Super. Ct. 1992); In re Langon, App. D.C., 663 A.2d 1248 (1995).

Subchapter III. Scope.

§ 21-2021. Territorial application.

Except as otherwise provided in this chapter, this chapter applies to:

(1) Affairs and estates of a disappeared individual who is domiciled in the District and an individual to be protected who is domiciled in the District;

(2) Property located in the District of a non-domiciliary who is a disappeared individual or an individual to be protected;

(3) Property coming into the control of a guardian or conservator who is subject to the laws of the District; and

(4) An incapacitated individual in the District. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Assets sufficient for venue. — The fact that most of the ward's assets remain in the

District of Columbia provides sufficient basis for keeping the case here. *Mayes v. Sanford*, App. D.C., 641 A.2d 855, cert. denied, — U.S. —, 115 S. Ct. 356, 130 L. Ed. 2d 311 (1994).

§ 21-2022. Practice in court.

Unless specifically provided to the contrary in this chapter or inconsistent with its provisions, the rules of the court, including the rules concerning vacation of orders and appellate review, govern proceedings under this chapter. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2023. Jury trial.

Repealed. Sept. 22, 1989, D.C. Law 8-34, § 2(d), 36 DCR 5035.

Legislative history of Law 8-34. — See note to § 21-2002.

§ 21-2024. Appeals.

Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the rules applicable to the appeals to the District of Columbia court of Appeals. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Subchapter IV. Notice, Parties, and Representation in Guardianship and Protective Proceedings.

§ 21-2031. Notice; method, contents, and time of giving.

(a) If notice of a hearing on any petition is required, other than a notice meeting specific notice requirements otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to the person to be notified or to the attorney, if the person has appeared by attorney or requested that notice be sent to an attorney.

(b) Notice must be given:

(1) By mailing a copy of the notice at least 17 days before the time set for the hearing by certified or ordinary first-class mail, addressed to the person being notified, using the post office address given in the request for notice, if any, or to the person's office or place of residence, if known;

(2) By personally delivering a copy to the person being notified at least 14 days before the time set for the hearing; or

(3) In the case of an individual who has disappeared, has been detained by a foreign power, or is being held by someone other than a foreign power, by publishing, at least once a week for 3 consecutive weeks, a copy of the notice in a newspaper of general circulation in the District, the first publication of which is at least 40 days before the date set for the hearing.

(c) The court, for good cause shown, may provide for a different method or time of giving notice for any hearing.

(d) Proof of the giving of notice must be made by affidavit not later than the date of the hearing specified in the proceeding.

(e) The contents of the notice required in any proceeding under this chapter shall be as prescribed by court rule. Each notice shall explain the purposes, procedure, and significance of the pleading or hearing that the notice concerns, as well as the rights to which the parties are entitled. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(e), 36 DCR 5035.)

Section references. — This section is referred to in §§ 21-2042, 21-2053, and 21-2068.

Legislative history of Law 6-204. — See note to § 21-2001.

Legislative history of Law 8-34. — See note to § 21-2002.

§ 21-2032. Notice; waiver.

A person, including a guardian, guardian ad litem, conservator, or other fiduciary, may waive notice by a signed writing. An individual for whom a guardianship or other protective order is sought, a ward, or a protected individual may not waive notice. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2033. Guardian ad litem; counsel; visitor.

(a) At any point in a proceeding, a court may appoint a guardian ad litem to prosecute or defend the interest of individuals in any legal proceeding if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. In addition, a guardian ad litem may be appointed by the court to assist the subject of an intervention proceeding to determine his or her interests in regard to the guardianship or protective proceeding or to make that determination if the subject of the proceeding is unconscious or otherwise wholly incapable of determining his or her interests in that proceeding even with assistance. In either case the guardian ad litem shall not serve as an independent finder of fact, investigator, ombudsman, or other neutral party in the proceeding. The court, as a part of the record of the proceeding, shall set out its reasons for appointing a guardian ad litem and his or her specific duties.

(b) The duty of counsel for the subject of a guardianship or protective proceeding is to represent zealously that individual's legitimate interests. At a minimum, this shall include:

(1) Personal interviews with the subject of the intervention proceeding;

(2) Explaining to the subject of the intervention proceeding, in the language, mode of communication, and terms that the individual is most likely to understand, the nature and possible consequences of the proceeding, the alternatives that are available, and the rights to which the individual is entitled; and

(3) Securing and presenting evidence and testimony and offering arguments to protect the rights of the subject of the guardianship or protective proceeding and further that individual's interests.

(c) Visitors appointed by the court in guardianship or protective proceedings shall interview the subject of the proceeding, the person who has filed the petition initiating the proceeding, and any person nominated to serve as guardian or conservator. The visitor shall also visit the present place of abode of the subject of the proceeding and the place it is proposed that the individual will be detained or reside if the appointment is made. The visitor shall submit a written report to the court. If a person has been nominated for appointment as a guardian or conservator, the visitor shall investigate whether a conflict or potential conflict of interest should preclude the appointment. If no person is

nominated, the visitor shall make a nomination in his or her report to the court. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Best interest of individuals. — The duty of deciding what arrangement is in the best interests of the ward remains with the court at all times. *Mayes v. Sanford*, App. D.C., 641 A.2d 855, cert. denied, — U.S. —, 115 S. Ct. 356, 130 L. Ed. 2d 311 (1994).

Criminal proceedings. — Where a criminal defendant charged with drug-related offenses does not realize the seriousness of the penalties he faces, that does not mean the intervention system is appropriately invoked, since he may have an insanity defense which ought to be raised in his criminal proceeding,

and a guardian ad litem may be sought in the civil forfeiture case. With those safeguards available, the intervention system is surplusage. In re *Estate of Burch*, 120 WLR 2701 (Super. Ct. 1992).

Visitor's report. — Where visitor filed a comprehensive report recommending that the petition by daughter to be her mother's guardian be denied, trial court did not abuse its discretion in denying petition. In re *Langon*, App. D.C., 663 A.2d 1248 (1995).

Cited in *Haden v. Henderson*, App. D.C., 521 A.2d 666 (1987); *S.S. v. D.M.*, App. D.C., 597 A.2d 870 (1991).

§ 21-2034. Request for notice; interested person.

Upon payment of any required fee, an interested person who desires to be notified before any order is made in any proceeding under this chapter may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall mail a copy of the request to the guardian and to the conservator if either has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to proceedings occurring after the filing. Any governmental agency paying or planning to pay benefits to the individual to be protected is an interested person in protective proceedings. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Subchapter V. Guardians of Incapacitated Individuals.

§ 21-2041. Procedure for court-appointment of a guardian of an incapacitated individual.

(a) An incapacitated individual or any person interested in the welfare of the incapacitated individual may petition for appointment of a guardian, either limited or general.

(b) The petition shall state the name, address, and interest of the petitioner, state the name, age, residence, and address of the individual for whom a guardian is sought, and set forth the reasons for which the guardianship is sought with specific particularity so as to enable the court to determine what class of examiner and visitor should examine the person alleged to be incapacitated.

(c) The petition shall be served upon the subject of the petition, by first class mail, within 3 days of its filing. Proof of service is to be by certificate of service.

(d) After the filing of a petition, the court shall set a date for hearing on the issue of incapacity so that notice may be given as required by section 21-2042 and, unless the allegedly incapacitated individual is represented by counsel, the court shall appoint an attorney to represent the individual in the proceeding. The court shall appoint an appropriately qualified examiner who shall submit a report in writing to the court. The individual alleged to be incapacitated also shall be interviewed by a visitor appointed by the court. The examiner and the visitor shall be separate persons. The court may waive the appointment of a visitor and, where a report has been submitted in writing to the court for the allegedly incapacitated individual, the court may waive the appointment of an examiner.

(e) The court may utilize the services of additional visitors to evaluate the condition of the allegedly incapacitated individual and to make appropriate recommendations to the court.

(f) In the case of an individual whose incapacity is alleged to arise out of mental retardation, preference is for the appointment of an examiner and visitor who are qualified mental retardation professionals and who can collectively give a complete social, psychological, and medical evaluation of the individual. When the alleged mentally retarded individual has a current comprehensive evaluation or habilitation plan, the plan shall be presented as evidence to the court. When a plan exists but has not been updated within 6 months prior to the hearing, preference is for an update of the plan as part of the examination conducted by the examiner and visitor.

(g) For any other individual alleged to be incapacitated, any current social, psychological, medical, or other evaluation used for diagnostic purposes or in the development of a current plan of treatment or any current plan of treatment shall be presented as evidence to the court.

(h) An individual alleged to be incapacitated shall be present at the hearing unless good cause is shown for the absence. The individual shall be represented by counsel and is entitled to present evidence and to cross-examine witnesses, including any court-appointed examiner or visitor. The hearing may be closed if the individual alleged to be incapacitated or counsel for the individual so requests.

(i) Any person may apply for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the alleged incapacitated individual will be served. The court may attach appropriate conditions to the permission. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(f)-(g), 36 DCR 5035.)

Legislative history of Law 6-204. — See note to § 21-2001.

Legislative history of Law 8-34. — See note to § 21-2002.

Cited in *In re Estate of Burch*, 120 WLR 2701 (Super. Ct. 1992).

§ 21-2042. Notice; guardianship proceeding.

(a) In a proceeding for the appointment of a guardian of an incapacitated individual, notice of a hearing shall be given to each of the following:

(1) The individual alleged to be incapacitated and his or her spouse or, if none, adult children, or, if none, parents;

(2) Any person who is serving as guardian or conservator, or who has the care and custody of the individual alleged to be incapacitated;

(3) In case no other individual is notified under paragraph (1) of this subsection, at least 1 of the nearest adult relatives, if any can be found; and

(4) Any other person as directed by the court.

(b) Notice of a hearing on a petition for an order subsequent to appointment of a guardian shall be given to the ward, the guardian, and any other person ordered by the court.

(c) Notice shall be served personally on the alleged incapacitated individual. Notice to other individuals as required by subsection (a) of this section shall be served personally if the individual to be notified can be found within the District. In all other cases, required notices shall be given as provided in section 21-2031.

(d) The individual alleged to be incapacitated may not waive notice. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in §§ 21-2041, 21-2046, 21-2053, and 21-2068.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2043. Who may be guardian; priorities.

(a) Any qualified person may be appointed guardian of an incapacitated individual.

(b) Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated individual's current stated wishes or his or her most recent nomination in a durable power of attorney.

(c) Except as provided in subsection (b) of this section, the following persons are entitled to consideration for appointment in the order listed:

(1) The spouse of the incapacitated individual or a person nominated by will of a deceased spouse or by another writing signed by the spouse and attested by at least 2 witnesses;

(2) An adult child of the incapacitated individual or a person nominated by will of a deceased adult child or by other writing signed by the child and attested by at least 2 witnesses;

(3) A parent of the incapacitated individual or a person nominated by will of a deceased parent or by other writing signed by a parent and attested by at least 2 witnesses;

(4) Any relative of the incapacitated individual with whom he or she has resided for more than 6 months prior to the filing of the petition; and

(5) Any other person.

(d) With respect to persons having equal priority, the court shall select the person it deems best qualified to serve. The court, acting in the best interest of the incapacitated individual, may pass over a person having priority and appoint a person having a lower priority or no priority. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Cited in *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-2044. Findings; order of appointment.

(a) The court shall exercise the authority conferred in this subchapter so as to encourage the development of maximum self-reliance and independence of the incapacitated individual and make appointive and other orders only to the extent necessitated by the incapacitated individual's mental and adaptive limitations or other conditions warranting the procedure.

(b) The court may appoint a guardian as requested if it is satisfied that the individual for whom a guardian is sought is incapacitated and that the appointment is necessary as a means of providing continuing care and supervision of the person of the incapacitated individual. The court, on appropriate findings, may:

(1) Treat the petition as a petition for a protective order under section 21-2051 and proceed accordingly;

(2) Enter any other appropriate order; or

(3) Dismiss the proceedings.

(c) The court, at the time of appointment, later on its own motion, or on appropriate petition or motion of the incapacitated individual or other interested person, may limit the powers of a guardian otherwise conferred by this chapter and create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated individual shall be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate letters issued.

(d) While a petition for appointment of a guardian is pending, after a preliminary hearing, and without notice to others, the court may preserve and apply the property of the individual to be protected as may be required for support of the individual or dependents of the individual. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in §§ 21-2011 and 21-2047.

Legislative history of Law 6-204. — See note to § 21-2001.

Petition for appointment denied. — Where visitor, pursuant to D.C. Code § 21-

2033, filed a comprehensive report recommending that the petition by daughter to be her mother's guardian be denied, trial court did not abuse its discretion in denying petition. *In re Langon*, App. D.C., 663 A.2d 1248 (1995).

§ 21-2045. Acceptance of appointment; consent of jurisdiction.

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered or mailed to the guardian at the address listed in the court records and at the address as then known to the petitioner, except where the guardian resides in a foreign jurisdiction in which case notice shall be made to the court. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2046. Emergency orders; temporary guardians.

(a) If an incapacitated individual has no guardian, a life threatening emergency exists, and no other person appears to have authority to act within the circumstances, the court, on appropriate petition, may appoint a temporary guardian whose authority may not extend beyond 15 days and who may exercise those powers granted in the order. Immediately upon receipt of the petition, counsel shall be appointed for the individual alleged to be incapacitated and notice provided to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042. The individual alleged to be incapacitated, counsel for that individual, or any other interested person may request a hearing at any time within the period of the temporary guardianship. The hearing shall be held no later than 48 hours after the request.

(b) If the court finds that an appointed guardian is not effectively performing duties and that the welfare of the incapacitated individual requires immediate action, it may appoint, with notice to interested parties within 14 days after the appointment, a temporary guardian for the incapacitated individual. This temporary guardian shall have the powers set forth in the previous order of appointment for a specified period not to exceed 6 months. The authority of any permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority.

(c) The court may remove a temporary guardian at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this chapter concerning guardians apply to temporary guardians. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2047. General powers and duties of guardian.

Except as limited pursuant to section 21-2044, a guardian of an incapacitated individual is responsible for care, custody, and control of the ward, but is not personally liable to third persons by reason of that responsibility for acts of the ward.

(a) In particular and without qualifying the foregoing, a guardian shall:

(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(2) Take reasonable care of the ward's personal effects and commence protective proceedings, if necessary, to protect other property of the ward;

(3) Apply any available money of the ward to the ward's current needs for support, care, habilitation, and treatment;

(4) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs; and

(5) Report in writing the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the ward's welfare or as required by court rule, but at least semi-annually.

(b) A guardian may:

(1) Receive money payable for the support of the ward under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship;

(2) Take custody of the person of the ward and establish the ward's place of abode within or without the District, if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward;

(3) Institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward, if no conservator for the estate of the ward has been appointed;

(4) Consent to medical examination and medical or other professional care, treatment, or advice for the ward, without liability, by reason of the consent for injury to the ward resulting from the negligence or acts of third persons, unless the guardian fails to act in good faith;

(5) Obtain medical records for the purpose of applying for government entitlements or private benefits and have the status of a legal representative under the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Code, sec. 6-2001 *et seq.*); and

(6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(c) A guardian shall not have the power:

(1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(3) To consent to the withholding of non-emergency, life-saving, medical procedures unless it appears that the incapacitated person would have consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(4) To consent to the involuntary or voluntary civil commitment of an incapacitated individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under chapter 5 of title 21, except that a guardian may function as a petitioner for the commitment consistent with the requirements of chapter 5 of title 21 or the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective November 8, 1978 (D.C. Law 2-137; D.C. Code, sec. 6-1901 *et seq.*);

(5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal; or

(6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

(d) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by order of the court pursuant to section 21-2060(a). (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; May 10, 1989, D.C. Law 7-231, § 27, 36 DCR 492; Sept. 22, 1989, D.C. Law 8-34, § 2(h), 36 DCR 5035.)

Legislative history of Law 6-204. — See note to § 21-2001.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-34. — See note to § 21-2002.

§ 21-2048. Termination of guardianship for incapacitated individual.

The authority and responsibility of a guardian of an incapacitated individual terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or the removal or resignation of the guardian as provided in section 21-2049. The termination does not affect a guardian's liability for prior acts or the obligation to account for funds and assets of the ward. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2049. Removal or resignation of guardian; termination of incapacity.

(a) On petition of the ward or any person interested in the ward's welfare, the court, after hearing, may remove a guardian if removal is in the best interest of the ward. On petition of the guardian, the court, after hearing, may accept a resignation.

(b) The ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated and for termination of the guardianship. A request for an order may also be made informally to the court and any individual who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court. A ward seeking termination is entitled to the same rights and procedures as in an original proceeding for appointment of a guardian.

(c) Upon removal, resignation, or death of the guardian, or if the guardian is determined to be incapacitated, the court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian, or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in § 21-2048.

Legislative history of Law 6-204. — See note to § 21-2001.

Appellate review. — An appellate court

reviews the trial court's refusal to remove guardians and conservator for abuse of discretion. In re Langon, App. D.C., 663 A.2d 1248 (1995).

Subchapter VI. Protection of Property of Incapacitated, Disappeared or Detained Individuals.

§ 21-2051. Protective proceedings.

(a) Upon petition and after notice and hearing in accordance with the provisions of this subchapter, the court may appoint a conservator or make any other protective order for cause as provided in this section.

(b) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of an individual, if the court determines that either the individual is an incapacitated individual according to section 21-2011(11), has disappeared, is being detained by a foreign power, or is being held hostage by someone other than a foreign power and:

(1) The individual has property that will be wasted or dissipated unless property management is provided; or

(2) Money is needed for the support, care, and welfare of the individual or those entitled to the individual's support and protection is necessary or desirable to obtain and provide money. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in §§ 21-2044 and 21-2056.

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2052. Original petition for appointment or protective order.

(a) The individual to be protected or any person who is interested in the estate, affairs, or welfare of the individual may petition for the appointment of a conservator or for any other appropriate protective order.

(b) The petition must set forth, to the extent known:

(1) The name, address, and interest of the petitioner;

(2) The name, age, residence, and address of the individual to be protected;

(3) The name and address of the guardian, if any;

(4) The name and address of the nearest relative known to the petitioner;

(5) A general statement of the individual's property with an estimate of the value of that property, including any compensation, insurance, pension, or allowance to which the individual is entitled; and

(6) The reason why appointment of a conservator or other protective order is necessary, stated with sufficient particularity as to enable the court to determine what class of examiner and visitor should examine the individual alleged to be incapacitated. If the appointment of a conservator is requested, the petition shall also set forth the name and address of the person whose appointment is sought and the basis of any claim to priority for appointment. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2053. Notice.

(a) On a petition for appointment of a conservator or other protective order, the requirements for notice described in section 21-2042 apply, but if the individual to be protected has disappeared, has been detained by a foreign power, or is being held hostage by someone other than a foreign power, notice to the individual must be given by publication as provided in section 21-2031 (b)(3).

(b) Notice of a hearing on a petition for an order subsequent to appointment of a conservator or other protective order shall be given to the protected individual, any conservator of the protected individual's estate, and any other person as ordered by the court. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2054. Procedure concerning hearing and order on original petition.

(a) Upon receipt of a petition for appointment of a conservator or other protective order, the court shall set a date for a hearing. Unless the individual to be protected has chosen counsel, the court shall appoint an attorney to represent the individual. Except where the incapacity is alleged to be by disappearance or detention by a foreign power, the court may appoint an appropriately qualified examiner who shall submit a written report to the court. Except where the incapacity is alleged to be by disappearance or detention by a foreign power or someone other than a foreign power, the court may appoint a visitor who shall submit a written report to the court. If an examiner and a visitor are appointed for an individual, the examiner and visitor shall be separate persons.

(b) The court may utilize the services of additional visitors to evaluate the condition of the allegedly incapacitated individual and to make appropriate recommendations to the court.

(c) In the case of an individual whose incapacity is alleged to arise out of mental retardation, preference is for the appointment of an examiner and visitor who are qualified mental retardation professionals and who can collectively give a complete social, psychological, and medical evaluation of the individual. When the alleged mentally retarded individual has a current comprehensive evaluation or habilitation plan, the plan shall be presented as evidence to the court. When a plan exists but has not been updated within 6 months prior to the hearing, preference is for an update of the plan as part of the examination conducted by the examiner and visitor.

(d) For other individuals alleged to be incapacitated, any current social, psychological, medical, or other evaluation used for diagnostic purposes or in the development of a current plan of treatment, or any current plan of treatment shall be presented as evidence to the court.

(e) An individual alleged to be incapacitated shall be present at the hearing unless good cause is shown for the absence. The individual shall be represented by counsel and is entitled to present evidence and cross-examine witnesses, including any court-appointed examiner or visitor. The hearing may be closed if the individual alleged to be incapacitated or counsel for the individual so requests.

(f) Any person may apply for permission to participate in the proceeding and the court may grant the request, with or without hearing, upon determining that the best interest of the individual to be protected will be served. The court may attach appropriate conditions to the permission.

(g) After the hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(i), 36 DCR 5035; Feb. 22, 1990, D.C. Law 8-63, § 2, 36 DCR 7718; May 15, 1990, D.C. Law 8-123, § 2, 37 DCR 2085.)

Legislative history of Law 6-204. — See note to § 21-2001.

Legislative history of Law 8-34. — See note to § 21-2002.

Legislative history of Law 8-63. — Law 8-63, the “Guardianship and Protective Proceedings Amendment Temporary Act of 1989,” was introduced in Council and assigned Bill No. 8-397. The Bill was adopted on first and second readings on September 26, 1989, and October 10, 1989, respectively. Signed by the Mayor on October 27, 1989, it was assigned Act No. 8-98 and transmitted to both Houses of

Congress for its review. D.C. Law 8-63 became effective on February 22, 1990.

Legislative history of Law 8-123. — Law 8-123, the “Guardianship and Protective Proceedings Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-387, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 13, 1990, and February 27, 1990, respectively. Signed by the Mayor on March 15, 1990, it was assigned Act No. 8-176 and transmitted to both Houses of Congress for its review.

§ 21-2055. Permissible court orders.

(a) The court shall exercise the authority conferred in this subchapter to encourage the development of maximum self-reliance and independence of a protected individual and make protective orders only to the extent necessitated by the protected individual’s mental and adaptive limitations and other conditions warranting the procedure.

(b) The court has the following powers that may be exercised directly or through a conservator with respect to the estate and business affairs of a protected individual:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court may preserve and apply the property of the individual to be protected as may be required for the support of the individual or dependents of the individual.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual, the court, for the benefit of the individual and members of the individual’s immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not incapacitated, except the power to make a will. Those powers include, but are not limited to:

(A) Power to obtain medical records for purposes of application for governmental entitlements or private benefits;

(B) Power to make gifts;

(C) Power to convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to a joint tenancy or tenancy by the entirety;

(D) Power to exercise or release powers held by the protected individual as trustee, personal representative, custodian for a minor, conservator, or donee of a power of appointment;

(E) Power to enter into contracts;

(F) Power to create revocable or irrevocable trusts of property of the estate that may extend beyond the incapacity or life of the protected individual;

(G) Power to exercise options of the protected individual to purchase securities or other property;

(H) Power to exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value; and

(I) Power to exercise any right to an elective share in the estate of the individual's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

(c) The court may exercise or direct the exercise of the following powers only if satisfied, after notice and hearing, that it is in the best interest of the protected individual and that the individual either is incapable of consenting or has consented to the proposed exercise of power:

(1) To exercise or release powers of appointment of which the protected individual is donee;

(2) To renounce or disclaim interests;

(3) To make gifts in trust or otherwise exceeding 20% of any year's income of the estate; and

(4) To change beneficiaries under insurance and annuity policies. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in §§ 21-2011, 21-2069, 21-2071, and 21-2072.

Right to waive filing of account. — Under subdivision (b)(2) of this section, the right to waive the filing of an account by an incapacitated heir or legatee to an interest in an estate

is within the power reserved to the court. *Estate of Charuhas*, 121 WLR 147 (Super. Ct. 1993).

Cited in *Spencer v. Williams*, App. D.C., 569 A.2d 1194 (1990); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 21-2056. Protective arrangements and single transactions authorized.

(a) If it is established in a proper proceeding that a basis exists as described in section 21-2051 for affecting the property and business affairs of an individual, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected individual. Protective arrangements include payment, delivery, deposit, or retention of funds or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or addition to or establishment of a suitable trust.

(b) If it is established in a proper proceeding that a basis exists as described in section 21-2051 for affecting the property and business affairs of an individual, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected individual's property and business affairs if the court determines that the transaction is in the best interest of the protected individual.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected individual and, in view of the incapacity, disappearance, or detention by a foreign power, whether the protected individual needs the

continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in § 21-2011.

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2057. Who may be appointed conservator; priorities.

(a) The court may appoint a person or a corporation with general power to serve as trustee or conservator of the estate of a protected individual. The following are entitled to consideration for appointment in the order listed:

(1) A conservator, guardian of property, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected individual resides, or a person nominated by the incapacitated individual in a durable power of attorney;

(2) A person or corporation nominated by the protected individual;

(3) The spouse of the protected individual;

(4) An adult child of the protected individual;

(5) A parent of the protected individual;

(6) Any relative of the protected individual who has resided with the protected individual for more than 6 months before the filing of the petition; and

(7) Any other person.

(b) An individual listed in paragraph (1), (3), (4), (5), or (6) of subsection (a) of this section may designate in writing a substitute to serve instead and transfer the priority to the substitute. With respect to persons having equal priority, the court shall select the person it deems best qualified to serve. The court, acting in the best interest of the protected individual, may pass over a person having priority and appoint a person having a lower priority or no priority. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2058. Bond.

The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus 1 year's estimated income, and minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Cited in *In re Henderson*, 115 WLR 1409 (Super. Ct. 1987).

§ 21-2059. Effect of acceptance of appointment.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator or mailed, by registered or certified mail, to the address as listed in the petition for appointment or as reported to the court and to the address as then known to the petitioner, except where the conservator resides in a foreign jurisdiction in which case notice shall be made to the court. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2060. Compensation and expenses.

(a) As approved by order of the court, any visitor, attorney, examiner, conservator, special conservator, guardian ad litem, or guardian is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement. Any guardian or conservator is entitled to reimbursement for room, board, and clothing personally provided to the ward from the estate of the ward, but only as approved by order of the court. Compensation shall be paid from the estate of the ward or person or, if the estate of the ward or person will be depleted by payouts made under this subsection, from a fund established by the District.

(b) There is established within the General Fund of the District of Columbia a separate account to be known as the "Guardianship Fund" ("Fund") and to be administered by the court. There is authorized to be appropriated funds necessary for the administration of this section. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; July 25, 1987, D.C. Law 7-17, § 2(a), 34 DCR 3802.)

Section references. — This section is referred to in § 21-2047.

Legislative history of Law 6-204. — See note to § 21-2001.

Legislative history of Law 7-17. — Law 7-17, the "District of Columbia Guardianship and Protective Proceedings Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-199, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1987, and May 19, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-31 and transmitted to both Houses of Congress for its review.

Appropriations approved. — Public Law 104-194, 110 Stat. 2358, the District of Columbia Appropriations Act, 1997, provided that funds appropriated for expenses under § 21-

2060, for fiscal year ending September 30, 1997, shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1989.

"Depleted." — Application of this section depends on the definition of the word "depleted" in subsection (a), which would be to "exhaust" or "empty." *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

Payment from Fund requires exhaustion of subject's estate. — This section does not permit payment from the Guardianship Fund by the taxpayers for legal services unless the subject's estate would be exhausted or emptied by payment from his or her estate. *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

Where an attorney is owed money for his or her legal services, where the subject's estate is not liquid and cash-poor, and where the attor-

ney desires payment from the Guardianship Fund, the court will examine the current nature of the subject's estate and determine if the subject's assets will be depleted, and will then make decisions regarding appropriate disbursement from the Fund under the current facts known to it. *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

Fee properly ordered. — Where the case was disposed of without the imposition of sometimes burdensome ongoing court supervision primarily through the efforts of the guardian ad litem, the court ordered payment to the guardian ad litem. *In re E.R.*, 122 WLR 501 (Super. Ct. 1994).

Rate of payment. — Under the unusual circumstance of requiring the fee to be paid by an unwilling subject in an intervention proceeding, where the petition was not granted, a rate of \$175 per hour was imposed. *In re E.R.*, 122 WLR 501 (Super. Ct. 1994).

Unsold real property. — If the estate consists of some unsold real property, the court cannot find that the estate is bereft of all assets such as to justify payment from the Guardianship Fund, in which case the real property will

have to be sold for the attorney to be paid, unless the subject is living on the real property. *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

Existence of burial fund. — The court, when examining requests for Guardianship Fund payments, will ignore a burial fund if it is within the maximum amount allowable under the District of Columbia and federal public assistance regulations. *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

Not revolving fund. — The Guardianship Fund will not be used as a revolving fund for the convenience of an attorney seeking payment for services. *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

Travel expenses. — Conservator's claims for travel time to and from her home and for parking fees at the courthouse were disallowed. *In re Allen*, 120 WLR 2721 (Super. Ct. 1992).

Rounding of hours. — The maximum hour rounding that should be permitted, and which the vast majority of attorneys practice, is to a tenth of an hour. *In re Estate of Torchiana*, 121 WLR 2477 (Super. Ct. 1993).

Cited in *In re Estate of Burch*, 120 WLR 2701 (Super. Ct. 1992).

§ 21-2061. Death, resignation, or removal of conservator.

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. Upon the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Appellate review. — *In re Langon*, App. D.C., 663 A.2d 1248 (1995).

§ 21-2062. Petitions for orders subsequent to appointment.

(a) Any person interested in the welfare of an individual for whom a conservator has been appointed may petition the court for an order:

- (1) Requiring bond, additional bond, or reducing bond;
- (2) Requiring a special accounting for the administration of the trust;
- (3) Directing distribution;
- (4) Removing the conservator and appointing a temporary or successor conservator; or

(5) Granting other appropriate relief.

(b) A conservator may petition the court for instructions concerning fiduciary responsibility.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2063. General duty of conservator.

A conservator, in relation to powers conferred by this subchapter, or implicit in the title acquired by virtue of the proceeding, shall act as a fiduciary and observe the standards of care applicable to trustees. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Cited in *In re Henderson*, 115 WLR 1409 (Super. Ct. 1987).

§ 21-2064. Inventory and records.

Within 60 days after appointment, each conservator shall prepare and file with the court a complete inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. The conservator shall provide a copy to the protected individual unless disappeared, detained by a foreign power, or held hostage by someone other than a foreign power. A copy also shall be provided to any guardian. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2065. Accounts.

(a) Each conservator shall account to the court for administration of the trust upon resignation or removal, at least annually on the anniversary date of appointment, and at other times as the court may direct. On termination of the protected individual's incapacity, a conservator shall account to the court, to the formerly protected individual, or the successors of that individual. Subject to appeal or vacation within the time permitted, an order after notice and hearing allowing an intermediate account of a conservator adjudicates liabilities concerning the matters considered in connection with the order, and an order, following notice and hearing, allowing a final account adjudicates all previously unsettled liabilities of the conservator to the protected individual or the protected individual's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate to be made in any manner the court specifies.

(b) Upon appointment, a conservator shall develop an individual conservatorship plan together with the guardian and to the maximum extent possible, the incapacitated individual. The plan shall specify:

(1) The services that are necessary to manage the financial resources designated by the order of the court;

(2) The means through which those services will be provided;

(3) The manner in which the incapacitated individual, guardian, conservator, or any other individual who has been appointed to serve in that capacity will exercise and share their decision-making authority;

(4) The policies and procedures governing the expenditure of funds; and

(5) Other items that will assist in the management of the designated financial resources and in fulfilling the needs of the incapacitated individual, the terms of the court's order, and the duties of the conservator.

(c) The individual conservatorship plan shall be submitted to the court not more than 60 days after the conservator has been appointed, together with a complete inventory of the designated financial resources. The inventory shall include an oath or affirmation that, to the best of the conservator's knowledge, it is complete and accurate.

(d) A conservator shall submit a report to the court:

(1) At least annually;

(2) When the court orders additional reports to be filed;

(3) When there is a significant change in the capacity of the incapacitated individual to manage his or her financial resources;

(4) When the conservator resigns or is removed; and

(5) When the conservatorship is terminated.

(e) The court shall require that a copy of the individual conservatorship plan and a copy of the inventory be sent to:

(1) The incapacitated individual;

(2) The attorney of record for each party;

(3) The individual most closely related to the subject of the intervention proceeding by blood or marriage unless that individual's name or whereabouts is unknown and cannot be reasonably ascertained;

(4) The individual or facility, if any, having custody of the subject of the intervention proceeding;

(5) The individual, if any, proposed for appointment by a will as a guardian; and

(6) The individual, if any, appointed or proposed for appointment as guardian ad litem.

(f) The conservator shall be responsible for sending the required copies delineated in subsection (e) of this section and shall bear the cost of the mailings. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2066. Conservators; title by appointment.

(a) The appointment of a conservator vests in the conservator title as trustee to all property of the protected individual presently held or after acquired, or to the part of the property specified in the order, including title to any property held for the protected individual by custodians or attorneys-in-fact. An order specifying that only a part of the property of the protected individual vests in the conservator creates a limited conservatorship.

(b) Except as otherwise provided in this chapter, the interest of the protected individual in property vested in a conservator by this section is not transferable or assignable by the protected individual. An attempted transfer or assignment by the protected individual, though ineffective to affect property rights, may generate a claim for restitution or damages.

(c) Neither property vested in a conservator by this section nor the interest of the protected person in that property is subject to levy, garnishment, or similar process, except as provided in an order issued in a protective proceeding.

(d) A claimant whose claim has not been paid may petition the court for a determination of the claim at any time before the claim is barred by the applicable statute of limitations and, upon due proof, may procure an order for the claim's allowance, payment, or security from the estate. If a proceeding is pending against a protected person at the time of the appointment of a conservator or is initiated against the protected person after the appointment, the moving party shall give notice to the conservator whenever the proceeding may result in a claim against the estate. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in §§ 21-2011 and 21-2072.

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2067. Recording of conservator's letters.

(a) Letters of conservatorship are evidence of the transfer of all assets, or the part of assets specified in the letters, of a protected individual to the conservator. An order terminating a conservatorship is evidence of the transfer of all assets subjected to the conservatorship from the conservator to the protected individual or to the personal representative of the individual.

(b) Letters of conservatorship and orders terminating conservatorships shall be filed or recorded in the Office of the Recorder of Deeds to give record notice of title as between the conservator and the protected individual.

(c) Letters of conservatorship shall be filed or recorded by the conservator and the conservator shall bear the costs of the filings. If the estate would be depleted by the payment of filing fees, the Recorder of Deeds may waive the fees. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2068. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.

Any sale or encumbrance to a conservator, the spouse, agent, attorney of a conservator, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator that is affected by a substantial conflict between fiduciary and personal interests is voidable, unless the transaction is approved by the court after a hearing as directed.

Notice of the hearing shall be in the form and manner as prescribed in sections 21-2042(c) and 21-2031(b) and shall be served on the following individuals:

- (1) The incapacitated individual;
- (2) The attorney of record for each party;
- (3) The individual most closely related to the subject of the intervention proceeding by blood or marriage, unless that individual's name or whereabouts is unknown and cannot be reasonably ascertained;
- (4) The individual or facility, if any, having custody of the subject of the intervention proceeding;
- (5) The individual, if any, proposed for appointment by will as a guardian; and
- (6) The individual, if any, appointed or proposed for appointment as guardian ad litem. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2069. Persons dealing with conservators; protection.

(a) A person who in good faith either assists or deals with a conservator for value in any transaction other than those requiring a court order as provided in section 21-2055(c) is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of power or the propriety of its exercise, but restrictions on powers of conservators that are endorsed on letters as provided in section 21-2072 are effective as to third persons. A person is not bound to see the proper application of estate assets paid or delivered to a conservator.

(b) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitute for protection provided by comparable provisions of the law relating to commercial transactions or to simplifying transfers of securities by fiduciaries. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2070. Powers of conservator in administration.

(a) Subject to limitation provided in section 21-2072, a conservator has all of the powers conferred in this section and any additional powers conferred by the law of the District.

(b) Without court authorization or confirmation, a conservator may invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish a purpose of the appointment, may act without court authorization or confirmation, to perform the following:

(1) Collect, hold, and retain assets of the estate including land in another jurisdiction, until judging that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

(2) Receive additions to the estate;

(3) Continue or participate in the operation of any business or other enterprise;

(4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) Invest and reinvest estate assets in accordance with subsection (b) of this section;

(6) Deposit estate funds in a local or federally insured financial institution, including a financial institution operated by the conservator;

(7) Acquire or dispose of an estate asset, including land in another jurisdiction, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(8) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(9) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange, partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(10) Enter, for any purpose, into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or agreement;

(12) Grant an option involving disposition of an estate asset and take an option for the acquisition of any asset;

(13) Vote a security, in person or by general or limited proxy;

(14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) Sell or exercise stock-subscription or conversion rights;

(16) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(17) Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(18) Borrow money to be repaid from estate assets or otherwise, advance money for the protection of the estate or the protected individual and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, for which the

conservator has a lien on the estate as against the protected individual for advances so made;

(19) Pay or contest any claim, settle a claim by or against the estate or the protected individual by compromise, arbitration, or otherwise, and release, in whole or part, any claim belonging to the estate to the extent the claim is uncollectible;

(20) Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(21) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, amortization, or for depletion in mineral or timber properties;

(22) Pay any sum distributable to a protected individual or dependent of the protected individual by paying the sum to the distributee or by paying the sum for the use of the distributee to the guardian of the distributee, or, if none, to a relative or other person having custody of the distributee;

(23) Employ persons, including attorneys, auditors, investment advisors, or agents to advise or assist in the performance of administrative duties, act upon their recommendation without independent investigation, and instead of acting personally, employ 1 or more agents to perform any act of administration, whether discretionary or not;

(24) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and for the protection of the conservator in the performance of fiduciary duties; and

(25) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in § 21-2072.

Legislative history of Law 6-204. — See note to § 21-2001.

Plenary powers of conservatorship. — Under subdivision (c)(19) of this section, the D.C. Superior Court has additional plenary powers of conservatorship which it could exercise on behalf of the subject of a guardianship proceeding over which it has jurisdiction. *Estate of Charuhas*, 121 WLR 147 (Super. Ct. 1993).

Paralegal fees. — Paralegals are persons properly employed under the powers a conservator has in his or her administrative capacity; however, because paralegal fees are for legal or quasilegal services, they should generally be

included in a petition for compensation, and may not be used as a means of supplanting a lawyer's office overhead expenses. *In re Johns*, 120 WLR 2693 (Super. Ct. 1992).

Fees totaling \$7,952.90 for freelance paralegals was not a reasonable expenditure, given the size of the estate, given the fact that the conservator hired outside freelance paralegals whenever he chose, and where time records from these paralegals revealed that considerable time was charged to the estate for performing what was, in essence, social work, book-keeping, and secretarial duties. *In re Johns*, 120 WLR 2693 (Super. Ct. 1992).

Cited in *In re Mitchell*, 121 WLR 541 (Super. Ct. 1993).

§ 21-2071. Distributive duties and powers of conservator.

A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or

benefit of the protected individual and dependents in accordance with the following principles:

(1) The conservator shall consider recommendations relating to the appropriate standard of support, education, and benefit of the protected individual or dependent made by the protected individual and a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons furnishing support, education, or care to the protected individual or a dependent pursuant to the recommendations of a guardian of the protected individual unless the conservator knows that the guardian derives personal financial benefit from the recommendation, including relief from any personal duty of support, or knows that the recommendations are clearly not in the best interest of the protected individual.

(2) The conservator shall expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected individual and dependents with due regard to:

(A) The size of the estate, the probable duration of the conservatorship, and the likelihood that the protected individual, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate;

(B) The accustomed standard of living of the protected individual and dependents; and

(C) Other funds or sources used for the support of the protected individual.

(3) The conservator may expend funds of the estate for the support of individuals legally dependent on the protected individual and others who are members of the protected individual's household who are unable to support themselves and who are in need of support.

(4) Funds expended under this section may be paid by the conservator to any person, including the protected individual, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected individual if it is reasonable to expect that the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(5) A conservator, in discharging the responsibilities conferred by court order and this section, shall implement the principles described in section 21-2055(a). (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in §§ 21-2072 and 21-2073.

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2072. Enlargement or limitation of powers of conservator.

Subject to the restrictions in section 21-2055(c), the court may confer on a conservator, at the time of appointment or later, in addition to the powers conferred by sections 21-2070 and 21-2071, any power that the court itself could exercise under section 21-2055(b)(2). The court, at the time of appointment or later, may limit the powers of a conservator otherwise conferred by

sections 21-2070 and 21-2071 or previously conferred by the court and may at any time remove or modify any limitations. If the court limits any power conferred on the conservator by section 21-2070 or section 21-2071, or specifies, as provided in section 21-2066(a), that title to some but not all assets of the protected individual vest in the conservator, the limitation or specification of assets subject to the conservatorship shall be endorsed upon the letters of appointment. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Section references. — This section is referred to in §§ 21-2069 and 21-2070.

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2073. Preservation of estate plan; right to examine.

In investing the estate, selecting assets of the estate for distribution under section 21-2071, and utilizing powers of revocation or withdrawal available for the support of the protected individual and exercisable by the conservator or the court, the conservator and the court shall take into account any estate plan of the protected individual known to them, including a will, any revocable trust of which the individual is settlor, and any contract, transfer, or joint ownership arrangement originated by the protected individual with provisions for payment or transfer of benefits or interests at the individual's death to another. The conservator may examine the will of the protected individual. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2074. Personal liability of conservator.

(a) Even if otherwise provided for in the contract, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration or distribution of the estate unless the conservator fails to reveal the representative capacity and identify the estate in the contract.

(b) The conservator is personally liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if personally at fault.

(c) Claims based on (1) contracts entered into by a conservator in a fiduciary capacity, (2) obligations arising from ownership or control of the estate, or (3) torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

(d) Any question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2075. Termination of proceedings.

The protected individual, conservator, or any other interested person may petition the court to terminate the conservatorship. A protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the incapacity of the protected individual or the need for the protective arrangement has ceased, shall terminate the conservatorship. Upon termination, title to assets of the estate passes to the formerly protected individual or to successors. The order of termination shall provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2076. Payment of debt and delivery of property to foreign conservator without local proceedings.

(a) Any person indebted to a protected individual or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected individual may pay or deliver it to a conservator, guardian of the estate, or other fiduciary appointed by a court of the state of residence of the protected individual upon being presented with proof of appointment and an affidavit made by or on behalf of the fiduciary stating:

(1) That no protective proceeding relating to the protected individual is pending in the District; and

(2) That the foreign fiduciary is entitled to payment or to receive delivery.

(b) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in the District, payment or delivery in response to the demand and affidavit discharges the debtor or possessor. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2077. Foreign conservator; proof of authority; bond; powers.

If a conservator has not been appointed in the District and no petition in a protective proceeding is pending in the District, a conservator appointed in the state in which the protected individual resides may file with the court authenticated copies of letters of appointment and copies of any bond. The domiciliary foreign conservator may then exercise, as to assets in the District, all powers of a conservator appointed in the District and may maintain actions and proceedings in the District subject to any conditions imposed upon

nonresident parties generally. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Subchapter VII. Durable Power of Attorney.

§ 21-2081. Definition.

A durable power of attorney is a power of attorney by which a principal designates, in writing, another as his or her attorney in fact and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time", or "This power of attorney shall become effective upon the disability or incapacity of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2082. Durable power of attorney not affected by incapacity.

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were not incapacitated. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2083. Relation of attorney in fact to court-appointed fiduciary.

(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his or her property except specific exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he or she were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his or her estate, or guardian of his or her person for consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accor-

dance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2084. Power of attorney not revoked until notice.

(a) The death of a principal who has executed a power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability of incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

§ 21-2085. Proof of continuance of durable and other powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he or she did not have, at the time of exercise of the power, actual knowledge of the termination of the power by revocation or of the principal's death or incapacity, is conclusive of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is recordable in the same manner. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Legislative history of Law 6-204. — See note to § 21-2001.

Subchapter VIII. Uniform Disclaimer of Property Interests.

§ 21-2091. Right to disclaim interest in property.

A person or the representative of an incapacitated or protected person to whom any interest in real or personal property ("property") devolves may disclaim the interest in property in whole or in part by delivering a written

disclaimer pursuant to section 21-2092. The right to disclaim an interest in property shall exist notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. (Mar. 6, 1991, D.C. Law 8-204, § 2, 37 DCR 8439; July 25, 1995, D.C. Law 11-30, § 5(a), 42 DCR 1547.)

Effect of amendments. — D.C. Law 11-30 substituted “section 21-2092” for “section 3.”

Legislative history of Law 8-204. — Law 8-204, the “District of Columbia Uniform Disclaimer of Property Interests Act of 1990,” was introduced in Council and assigned Bill No. 8-84, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-30. — Law 11-30, the “Technical Amendments Act of 1995,” was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

§ 21-2092. Time of disclaimer; delivery.

(a)(1) Except as provided in subsection (c) of this section, if an interest in property has devolved to a disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be delivered:

(A) As to a present interest in the real property, not later than 9 months after the death of the deceased owner or donee of a power of appointment; or

(B) As to a future interest, not later than 9 months after the event determining that the taker of interest in the property has become finally ascertained and the taker’s interest is indefeasibly vested.

(2)(A) The disclaimer shall be delivered in person or mailed by registered or certified mail to the:

(i) Personal representative or other fiduciary of the decedent;

(ii) Donee of a power of appointment;

(iii) Holder of the legal title to which the interest relates; or

(iv) Person entitled to the interest in the property in the event of disclaimer.

(B) A copy of the disclaimer may be filed in the Superior Court of the District of Columbia.

(b)(1) Except as provided in subsection (c) of this section, if the interest in property has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer shall be delivered:

(A) As to a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract; or

(B) As to a future interest, not later than 9 months after the event determining that the taker of interest in property has become finally ascertained and the taker’s interest indefeasibly vested.

(2) If the person entitled to disclaim has no actual knowledge of the existence of the interest in property, the disclaimer shall be delivered not later than 9 months after he or she has actual knowledge of the existence of the interest in property. The effective date of a revocable instrument or contract

shall be the date on which the maker ceases to have the power to revoke the revocable instrument or contract or the power to transfer to the maker or any other person the entire legal and equitable ownership of the interest. The disclaimer shall be delivered in person or mailed by registered or certified mail to the person who has legal title to or possession of the interest disclaimed.

(c) To qualify as a qualified disclaimer, a transfer that creates an interest in a disclaimant that is made after December 31, 1976, and is subject to tax under chapter 11, 12, or 13 of the Internal Revenue Code of 1954, as amended, shall:

(1) Specifically state that the transfer is a qualified disclaimer; and

(2) Be delivered no later than 9 months after the later of:

(A) The date the transfer is made; or

(B) The day on which the person who disclaims attains 21 years of age.

(d) A surviving joint tenant or tenant by the entirety may disclaim as a separate interest any interest in property devolving to the tenant by right of survivorship. A surviving joint tenant or tenant by the entirety may disclaim the entire interest in any property or interest in property that is the subject of a joint tenancy or tenancy by the entirety devolving to the tenant, if the joint tenancy or tenancy by the entirety was created by an act of a deceased joint tenant or tenant by the entirety and the survivor did not join in the creation of the joint tenancy or tenancy by the entirety.

(e) If an interest in property is disclaimed, a copy of the disclaimer may be recorded in the office of the Recorder of Deeds. (Mar. 6, 1991, D.C. Law 8-204, § 3, 37 DCR 8439.)

Section references. — This section is referred to in § 21-2091.

Legislative history of Law 8-204. — See note to § 21-2091.

References in text. — “Chapter 11, 12, or 13 of the Internal Revenue Code of 1954,”

referred to in the introductory language of subsection (c), are codified as Chapters 11, 12, or 13 of the Internal Revenue Code of 1986, 26 U.S.C. § 2001 et seq., § 2501 et seq., or § 2601 et seq.

§ 21-2093. Form of disclaimer.

The disclaimer shall describe the property or interest disclaimed, declare the disclaimer and extent of the disclaimer, and be signed by the disclaimant. (Mar. 6, 1991, D.C. Law 8-204, § 4, 37 DCR 8439.)

Legislative history of Law 8-204. — See note to § 21-2091.

§ 21-2094. Effect of disclaimer.

(a) If the interest in property devolved to a disclaimant under a testamentary instrument or the laws of intestacy, and the deceased owner or donee of a power of appointment has not provided for another disposition, the interest in property shall devolve as if the disclaimant had predeceased the decedent. If the disclaimant was designated to take under a power of appointment exercised by a testamentary instrument, the interest in property shall devolve as if the disclaimant had predeceased the donee of the power of appointment. If a future interest takes effect after the termination of the estate or interest

disclaimed, it shall take effect as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and the taker's interest is indefeasibly vested. For all purposes, a disclaimer shall relate back to the date of death of the decedent, the date of death of the donee of the power of appointment, or the determinative event.

(b)(1) If an interest in property devolves to a disclaimant under a nontestamentary instrument or contract that does not provide for another disposition:

(A) The interest in property shall devolve as if the disclaimant had died before the effective date of the instrument or contract; and

(B) A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest shall take effect as if the disclaimant had died before the event determining that the taker of the interest in property became finally ascertained and the taker's interest indefeasibly vested.

(2) For all purposes, a disclaimer shall relate back to the effective date of the instrument or contract or the date of the determinative event.

(c) The disclaimer or the written waiver of the right to disclaim shall be binding upon the disclaimant or person who waives the right to disclaim and any person who claims through or under the disclaimant. (Mar. 6, 1991, D.C. Law 8-204, § 5, 37 DCR 8439.)

Legislative history of Law 8-204. — See note to § 21-2091.

§ 21-2095. Waiver and bar.

The right to disclaim an interest in property is barred by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the interest in property;

(2) A contract to assign, convey, encumber, pledge, or transfer the interest in property;

(3) A written waiver of the right to disclaim;

(4) An acceptance of the interest in property or a benefit of an interest in property; or

(5) A judicial sale of the interest in property made before the disclaimer is effected. (Mar. 6, 1991, D.C. Law 8-204, § 6, 37 DCR 8439.)

Legislative history of Law 8-204. — See note to § 21-2091.

§ 21-2096. Remedy not exclusive.

This subchapter shall not abridge the right of a person to waive, release, disclaim, or renounce an interest in property under any other statute. (Mar. 6, 1991, D.C. Law 8-204, § 7, 37 DCR 8439; July 25, 1995, D.C. Law 11-30, § 5(b), 42 DCR 1547.)

Effect of amendments. — D.C. Law 11-30 substituted “subchapter” for “act.”

Legislative history of Law 11-30. — See note to § 21-2091.

Legislative history of Law 8-204. — See note to § 21-2091.

§ 21-2097. Application.

An interest in property that exists on March 6, 1991 may be disclaimed within 9 months of March 6, 1991 if:

(1) In the case of a present interest, the time for delivering a disclaimer under this subchapter has not expired; or

(2) In the case of a future interest, the interest has not become indefeasibly vested or the taker finally ascertained. (Mar. 6, 1991, D.C. Law 8-204, § 8, 37 DCR 8439; July 25, 1995, D.C. Law 11-30, § 5(c), 42 DCR 1547.)

Effect of amendments. — D.C. Law 11-30 substituted “subchapter” for “act” in (1).

Legislative history of Law 11-30. — See note to § 21-2091.

Legislative history of Law 8-204. — See note to § 21-2091.

§ 21-2098. Uniformity of application and construction.

This subchapter shall be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of this subchapter among states that enact it. (Mar. 6, 1991, D.C. Law 8-204, § 9, 37 DCR 8439; July 25, 1995, D.C. Law 11-30, § 5(d), 42 DCR 1547.)

Effect of amendments. — D.C. Law 11-30 substituted “subchapter” for “act” twice.

Legislative history of Law 11-30. — See note to § 21-2091.

Legislative history of Law 8-204. — See note to § 21-2091.

CHAPTER 22. HEALTH-CARE DECISIONS.

Sec.

- 21-2201. Purpose.
- 21-2202. Definitions.
- 21-2203. Presumption of capacity.
- 21-2204. Certification of incapacity.
- 21-2205. Durable power of attorney for health care.
- 21-2206. Rights and duties of attorney in fact.
- 21-2207. Forms for creating a durable power of attorney for health care.

Sec.

- 21-2208. Revocation.
- 21-2209. Health-care provider limitation.
- 21-2210. Substituted consent.
- 21-2211. Limitations.
- 21-2212. Effect of chapter.
- 21-2213. Construction.

§ 21-2201. Purpose.

The purpose of this chapter is to affirm the right of all competent adults to control decisions relating to their own health care and to have their rights and intentions in health care matters respected and implemented by others if they become incapable of making or communicating decisions for themselves. (Mar. 16, 1989, D.C. Law 7-189, § 2, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(b), 40 DCR 6311.)

Legislative history of Law 7-189. — Law 7-189, the “Health-Care Decisions Act of 1988,” was introduced in Council and assigned Bill No. 7-131, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 25, 1988, and November 15, 1988, respectively. Signed by the Mayor on December 1, 1988, it was assigned Act No. 7-251 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of

Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

In general. — The Health Care Decisions Act was designed to address situations in which doctors, family members, and the courts may be required to make treatment decisions for a patient who has become unable to decide such matters for himself or herself. *Tran Van Khiem v. United States*, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

Inapplicable to criminal defendant. — The Health Care Decisions Act had no bearing on the case of a criminal defendant committed pursuant to § 24-301(a). *Tran Van Khiem v. United States*, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

§ 21-2202. Definitions.

For the purposes of this chapter, the term:

- (1) “Attorney in fact” means the person who receives the power of attorney for health-care decisions pursuant to the provisions of this chapter.
- (2) “District” means the District of Columbia.
- (3) “Durable power of attorney for health care” means a legally enforceable document that:

(A) Is executed in the District in a manner consistent with this chapter or validly executed in another jurisdiction pursuant to similar provisions of the law of that jurisdiction; and

(B) Creates a power of attorney for health-care decisions, which is effective upon, and only during incapacitation and is unaffected by the subsequent disability or incapacity of the principal as defined in this chapter.

(4) "Health-care provider" means any person or organizational entity, including health care facilities as defined in § 32-1301, licensed or otherwise authorized to provide health-care services in the District.

(5) "Incapacitated individual" means an adult individual who lacks sufficient mental capacity to appreciate the nature and implications of a health-care decision, make a choice regarding the alternatives presented or communicate that choice in an unambiguous manner.

(5A) "Member of a religious order or diocesan priest" means an unmarried adult who, by vow or other bond of commitment, voluntarily undertakes a style of living under the rule and direction of a religious order or community that has been established for religious purposes and has been recognized and approved as a religious order or community by a church.

(6) "Principal" means a person who is competent to make health-care decisions for his or her own benefit or on his or her own account.

(7) "Religious superior" means a bishop or a member of a religious order who, under the approved constitution, laws, statutes, bylaws, or rules of the religious order or community, exercises authority over the particular community or unit of the religious order to which the member of the religious order or community belongs. (Mar. 16, 1989, D.C. Law 7-189, § 3, 35 DCR 8653; Mar. 11, 1992, D.C. Law 9-67, § 2(a), 39 DCR 12; Feb. 5, 1994, D.C. Law 10-68, § 23(c), 40 DCR 6311.)

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 9-67. — Law 9-67, the "Health-Care Decisions Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-41, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on Novem-

ber 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on December 20, 1991, it was assigned Act No. 9-118 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — See note to § 21-2201.

Cited in *In re Moses*, App. D.C., 659 A.2d 829 (1995).

§ 21-2203. Presumption of capacity.

An individual shall be presumed capable of making health-care decisions unless certified otherwise under § 21-2204. Mental incapacity to make a health-care decision shall not be inferred from the fact that an individual:

(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to § 21-501 et seq.;

(2) Is mentally retarded or has been determined by a court to be incompetent to refuse commitment under § 6-1901 et seq.; or

(3) Has a conservator or guardian appointed pursuant to § 21-1501 et seq. or § 21-2001 et seq. (Mar. 16, 1989, D.C. Law 7-189, § 4, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(d), 40 DCR 6311.)

Effect of amendments. — D.C. Law 10-68 substituted "§ 21-2204" for "section 5 of this act" in the introductory language, "§ 21-501 et

seq." for "chapter 5 of title 21 of the District of Columbia Code" in (1), "§ 6-1901 et seq." for "the Mentally Retarded Citizens Constitutional

Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Code, sec. 6-1901 et seq.)" in (2); and rewrote (3).

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

References in text. — The "Appointment of Conservators Act of 1964," referred to in paragraph (3) was 79 Stat. 774, repealed by D.C. Law 6-204.

§ 21-2204. Certification of incapacity.

(a) Mental incapacity to make a health-care decision shall be certified by 2 physicians who are licensed to practice in the District and qualified to make a determination of mental incapacity. One of the 2 certifying physicians shall be a psychiatrist. At least 1 of the 2 certifying physicians shall examine the individual in question within 1 day preceding certification. Both certifying physicians shall give an opinion regarding the cause and nature of the mental incapacity as well as its extent and probable duration.

(b) All professional findings and opinions forming the basis of certification under subsection (a) of this section shall be expressed in writing, included in the patient-care records of the individual, and provide clear evidence that the person is incapable of understanding the health-care choice, making a decision concerning the particular treatment or services in question, or communicating a decision even if capable of making it.

(c) Certification of incapacity under this section shall be limited in its effect to the capacity to make health-care decisions and shall not be construed as a finding of incompetency for any other purpose. (Mar. 16, 1989, D.C. Law 7-189, § 5, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(e), 40 DCR 6311.)

Section references. — This section is referred to in §§ 21-2203, 21-2205, and 21-2210.

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

§ 21-2205. Durable power of attorney for health care.

(a) A competent adult may designate, in writing, an individual who shall be empowered to make health-care decisions on behalf of the competent adult, if the competent adult becomes incapable, by reason of mental disability, of making or communicating a choice regarding a particular health-care decision.

(b) A durable power of attorney for health care shall include language which clearly communicates that the principal intends the attorney in fact to have the authority to make health-care decisions on behalf of the principal and shall include language identical or substantially similar to the following:

(1) "This power of attorney shall not be affected by the subsequent incapacity of the principal."; or

(2) "This power of attorney becomes effective upon the incapacity of the principal."

(c) A durable power of attorney for health care shall be dated and signed by the principal and 2 adult witnesses who affirm that the principal was of sound mind and free from duress at the time of signing. The 2 adult witnesses shall not include the principal, the health-care provider of the principal or an employee of the health-care provider of the principal.

(d) Of the 2 adult witnesses referred to in subsection (c) of this section, at least 1 shall not be related to the principal by blood, marriage or adoption and shall not be entitled to any part of the estate of the principal by a current will or operation of law.

(e) Any durable power of attorney for health care executed prior to March 16, 1989, and specifically written to include health-care decision making after incompetency shall be effective, if the execution of the prior document meets the requirements of this chapter. (Mar. 16, 1989, D.C. Law 7-189, § 6, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(f), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-255, § 20(e), 44 DCR 1271.)

Section references. — This section is referred to in § 21-2207.

Effect of amendments. — D.C. Law 11-255, in (e), inserted “for health care” preceding “executed” and inserted a comma following “1989.”

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act

of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 21-2206. Rights and duties of attorney in fact.

(a) Subject to any express limitations in the durable power of attorney for health care, an attorney in fact shall have all the rights, powers and authority related to health-care decisions that the principal would have under District and federal law. This authority shall include, at a minimum:

- (1) The authority to grant, refuse or withdraw consent to the provision of any health-care service, treatment, or procedure;
- (2) The right to review the health care records of the principal;
- (3) The right to be provided with all information necessary to make informed health-care decisions;
- (4) The authority to select and discharge health-care professionals; and
- (5) The authority to make decisions regarding admission to or discharge from health-care facilities and to take any lawful actions that may be necessary to carry out these decisions.

(b)(1) Except as provided in paragraph (2) of this subsection and unless a durable power of attorney for health care provides otherwise, the designated attorney in fact, if known to a health-care provider to be available and willing to make a particular health-care decision, shall have priority over any other person to act for the principal in all matters regarding health care.

(2) A designated attorney in fact shall not have the authority to make a particular health-care decision, if the principal is able to give or withhold informed consent with respect to that decision.

(c) In exercising authority under a durable power of attorney for health care, the attorney in fact shall have a duty to act in accordance with:

- (1) The wishes of the principal as expressed in the durable power of attorney for health care; or

(2) The good faith belief of the attorney in fact as to the best interests of the principal, if the wishes of the principal are unknown and cannot be ascertained.

(d) Nothing in this chapter shall affect any right that an attorney in fact may have, independent of the designation in a durable power of attorney for health care, to make or otherwise participate in health-care decisions on behalf of the principal. (Mar. 16, 1989, D.C. Law 7-189, § 7, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(g), 40 DCR 6311.)

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

§ 21-2207. Forms for creating a durable power of attorney for health care.

Any written form meeting the requirements of § 21-2205 may be used to create a durable power of attorney for health care. The following is offered as a sample form only and its inclusion in this section shall not be construed to preclude the use of alternative language:

“INFORMATION ABOUT THIS DOCUMENT

“THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, IT IS VITAL FOR YOU TO KNOW AND UNDERSTAND THESE FACTS:

“THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR ATTORNEY IN FACT THE POWER TO MAKE HEALTH-CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISIONS FOR YOURSELF.

“AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH-CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. IN ADDITION, AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

“YOU MAY STATE IN THIS DOCUMENT ANY TYPE OF TREATMENT THAT YOU DO NOT DESIRE AND ANY THAT YOU WANT TO MAKE SURE YOU RECEIVE.

“YOU HAVE THE RIGHT TO TAKE AWAY THE AUTHORITY OF YOUR ATTORNEY IN FACT, UNLESS YOU HAVE BEEN ADJUDICATED INCOMPETENT, BY NOTIFYING YOUR ATTORNEY IN FACT OR HEALTH-CARE PROVIDER EITHER ORALLY OR IN WRITING. SHOULD YOU REVOKE THE AUTHORITY OF YOUR ATTORNEY IN FACT, IT IS ADVISABLE TO REVOKE IN WRITING AND TO PLACE COPIES OF THE REVOCATION WHEREVER THIS DOCUMENT IS LOCATED.

“IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

* * * * *

“YOU SHOULD KEEP A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT. GIVE A COPY TO THE PERSON YOU NAME AS YOUR ATTORNEY IN FACT. IF YOU ARE IN A HEALTH-CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

“POWER OF ATTORNEY FOR HEALTH CARE

“I, _____, hereby appoint:

_____	_____
name	home address
_____	_____
home telephone number	
_____	_____
work telephone number	

as my attorney in fact to make health-care decisions for me if I become unable to make my own health-care decisions. This gives my attorney in fact the power to grant, refuse, or withdraw consent on my behalf for any health-care service, treatment or procedure. My attorney in fact also has the authority to talk to health-care personnel, get information and sign forms necessary to carry out these decisions.

“If the person named as my attorney in fact is not available or is unable to act as my attorney in fact, I appoint the following person to serve in the order listed below:

1.	_____	_____
	name	home address
	_____	_____
	home telephone number	
	_____	_____
	work telephone number	
2.	_____	_____
	name	home address
	_____	_____
	home telephone number	
	_____	_____
	work telephone number	

“With this document, I intend to create a power of attorney for health care, which shall take effect if I become incapable of making my own health-care decisions and shall continue during that incapacity.

“My attorney in fact shall make health-care decisions as I direct below or as I make known to my attorney in fact in some other way.

“(a) STATEMENT OF DIRECTIVES CONCERNING LIFE-PROLONGING CARE, TREATMENT, SERVICES, AND PROCEDURES:

“(b) SPECIAL PROVISIONS AND LIMITATIONS:

“BY MY SIGNATURE I INDICATE THAT I UNDERSTAND THE PURPOSE AND EFFECT OF THIS DOCUMENT.

“I sign my name to this form on _____
(date)

at: _____
_____ (address).

(Signature)

“WITNESSES

“I declare that the person who signed or acknowledged this document is personally known to me, that the person signed or acknowledged this durable power of attorney for health care in my presence, and that the person appears to be of sound mind and under no duress, fraud, or undue influence. I am not the person appointed as the attorney in fact by this document, nor am I the health-care provider of the principal or an employee of the health-care provider of the principal.

First Witness

Signature: _____

Home Address: _____

Print Name: _____

Date: _____

Second Witness

Signature: _____

Home Address: _____

Print Name: _____

Date: _____

(AT LEAST 1 OF THE WITNESSES LISTED ABOVE SHALL ALSO SIGN THE FOLLOWING DECLARATION.)

"I further declare that I am not related to the principal by blood, marriage or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal under a currently existing will or by operation of law.

Signature: _____

Signature: _____.”

(Mar. 16, 1989, D.C. Law 7-189, § 8, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(h), 40 DCR 6311.)

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

§ 21-2208. Revocation.

(a) At any time that the principal has the capacity to create a durable power of attorney for health care, the principal may:

(1) Revoke the appointment of the attorney in fact under a durable power of attorney for health care by notifying the attorney in fact orally or in writing; or

(2) Revoke the authority to make health-care decisions granted to the attorney in fact under a durable power of attorney for health care by notifying the health-care provider orally or in writing.

(b) If a health-care provider is notified of a revocation pursuant to subsection (a)(2) of this section, the health-care provider shall document this fact in the patient-care records of the principal and make a reasonable effort to notify the attorney in fact of the revocation.

(c) There shall be a rebuttable presumption, affecting the burden of proof, that a principal has the capacity to revoke a durable power of attorney for health care.

(d) Unless it expressly provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health-care decisions only.

(e) Unless a durable power of attorney for health care expressly provides otherwise, and after its execution the marriage of the principal is dissolved or annulled, the dissolution or annulment shall automatically revoke a designation of the former spouse as an attorney in fact to make health-care decisions for the principal. If a designation is revoked solely on account of this subsection, it shall be revived by the remarriage of the principal to the former spouse but may be subsequently revoked by an act of the principal. (Mar. 16, 1989, D.C. Law 7-189, § 9, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(i), 40 DCR 6311.)

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

§ 21-2209. Health-care provider limitation.

(a) No health-care provider may require an individual to execute a durable power of attorney for health care as a condition for the provision of health-care services or admission to a health-care facility, as defined in § 32-1301.

(b) After an individual has spent at least 48 hours in a health care facility, a health care provider may request the individual to execute a durable power of attorney for health care subject to the limitations set forth in this chapter.

The health care provider may not be named as the attorney in fact. (Mar. 16, 1989, D.C. Law 7-189, § 10, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(j), 40 DCR 6311.)

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

§ 21-2210. Substituted consent.

(a) In the absence of a durable power of attorney for health care and provided that the incapacity of the principal has been certified in accordance with § 21-2204, the following individuals, in the order of priority set forth below, shall be authorized to grant, refuse or withdraw consent on behalf of the patient with respect to the provision of any health-care service, treatment, or procedure:

(1) A court-appointed guardian or conservator of the patient, if the consent is within the scope of the guardianship or conservatorship;

(2) The spouse of the patient;

(3) An adult child of the patient;

(4) A parent of the patient;

(5) An adult sibling of the patient;

(5A) A religious superior of the patient, if the patient is a member of a religious order or a diocesan priest; or

(6) The nearest living relative of the patient.

(b) A decision to grant, refuse or withdraw consent made pursuant to subsection (a) of this section shall be based on the known wishes of the patient or, if the wishes of the patient are unknown and cannot be ascertained, on a good faith belief as to the best interests of the patient.

(c) There shall be at least 1 witness present whenever a person specified in subsection (a)(2) through (6) of this section grants, refuses or withdraws consent on behalf of the patient.

(d) If no individual in a prior class is reasonably available, mentally capable and willing to act, responsibility for decisionmaking shall rest with the next reasonably available, mentally capable, and willing person on the priority list.

(e) Any person listed in subsection (a) of this section shall have legal standing to challenge in the Superior Court of the District of Columbia any decision made by a person of higher priority as listed within that subsection. (Mar. 16, 1989, D.C. Law 7-189, § 11, 35 DCR 8653; Mar. 11, 1992, D.C. Law 9-67, § 2(b), 39 DCR 12; Feb. 5, 1994, D.C. Law 10-68, § 23(k), 40 DCR 6311.)

Section references. — This section is referred to in § 21-2211.

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 9-67. — See note to § 21-2202.

Legislative history of Law 10-68. — See note to § 21-2201.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 21-2211. Limitations.

No person authorized to act pursuant to § 21-2210 shall have the power:

(1) To consent to an abortion, sterilization or psycho-surgery, unless authorized by a court; or

(2) To consent to convulsive therapy or behavior modification programs involving aversive stimuli, unless authorized by a court. (Mar. 16, 1989, D.C. Law 7-189, § 12, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(l), 40 DCR 6311.)

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

§ 21-2212. Effect of chapter.

Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural process of dying. (Mar. 16, 1989, D.C. Law 7-189, § 13, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(m), 40 DCR 6311.)

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

§ 21-2213. Construction.

This chapter shall be liberally construed and applied to promote its underlying purposes and policies. (Mar. 16, 1989, D.C. Law 7-189, § 14, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(n), 40 DCR 6311.)

Legislative history of Law 7-189. — See note to § 21-2201.

Legislative history of Law 10-68. — See note to § 21-2201.

